

Michael Romano
Lecturer in Law
559 Nathan Abbott Way
Stanford, California 94305-8610
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mromano@stanford.edu

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to enthusiastically recommend my former student Alisa Hoban as a law clerk in your chambers. She is a star and a pleasure to work with. I am confident she will make a terrific clerk, and you will congratulate yourself on hiring her.

In my dozen years teaching at Stanford, Alisa stands out as one of the most engaged, conscientious, and talented students I've had the pleasure of teaching.

In the fall of 2022, Alisa enrolled as a student in the Stanford Three Strikes Project, a program that combines experiential (clinic-style) learning with a classic seminar curriculum, which I teach. The Project's seminar component covers advanced criminal procedure, related constitutional doctrine, and post-conviction litigation strategies. As a student in the Project, Alisa was responsible for leading our litigation on behalf of a state prisoner sentenced to life under California's Three Strikes law for a nonviolent crime. As a result of the mixed-nature of the Project program, I was able to observe and supervise Alisa in both academic and professional settings.

Alisa led all aspects of our representation of a Project client sentenced to life for stealing a bag of groceries. The case was complicated and novel. It involved eligibility criteria for criminal justice reform measures recently enacted by the state legislature. The case is currently pending before the California Superior Court. Alisa did an outstanding job drafting our opening brief in the case, distilling the legal issues, unusual procedural posture, and standards of review. Any top-tier law firm would be proud of her work.

Alisa's writing is clear and concise. She does an excellent job combing through the record, finding relevant details, and linking those facts to helpful case law, statutes, and regulations. She also built excellent rapport with our client, who was unaccustomed to having visitors and unaware of his legal opportunities.

As part of the Project, we had weekly supervision meetings in addition to the Project seminar. Alisa was always well prepared and engaged. She takes feedback well and is a very hard worker. She is thoughtful, earnest, and intellectually curious and honest. She is able to work in fast-paced and high-stakes environments, analyzing large amounts of information and succinctly summarizing the merits. Alisa also works within time deadlines and produced well-edited and complete written work.

Alisa also has a broad range of experience and commitment to public interest legal work. She has worked for both the United States Department of Justice Antitrust Division and the Federal Defenders in New York City. She has also worked with people experiencing homelessness and refugees. At Stanford, she won the Leon Cain Community Service Award, which is awarded for strengthening the community through leadership and care; and the top grade and honor for Outstanding Performance in Lawyering for Change.

Finally, Alisa is a pleasure to work with, and it is my impression that she is extremely well liked among other students at the law school. She engages deeply with her work and is eager to learn and work hard. She frequently delivers more than what is expected and happily takes on extra challenges.

In short, I believe Alisa will make an excellent attorney and law clerk. Please do not hesitate to contact me if you have any questions about Alisa or her application.

Sincerely,

/s/ Michael Romano

Michael Romano - mromano@stanford.edu - (650) 736-8670

S. ALISA HOBAN

1645 Madrono Ave., Palo Alto, CA 94306 | (512) 653-1445 | alisah@stanford.edu

WRITING SAMPLE

The attached writing sample is a draft objection to a probation department's presentence investigation report. I prepared this draft objection as a legal intern for the Federal Defenders of New York in the Eastern District. As such, the legal research was primarily guided by the caselaw in the Eastern District of New York and Second Circuit precedent.

At the beginning of the assignment, I received guidance as to what kind of cases would be helpful and discussed the legal research to be performed with my attorney supervisors. I performed all of the legal research for the draft pre-sentence report objection and later received feedback and submitted additional drafts. Identifying information about my client, including references to discovery materials, has either been redacted or replaced with fictional names for confidentiality purposes. I am submitting the attached writing sample with the permission of the office of the Federal Defenders of New York in the Eastern District.

Background

The client was awaiting sentence, having pled guilty to Arson. In the context of the civil unrest that followed the murder of George Floyd in May 2020, she attended protests and threw a bottle, alleged to have been a Molotov cocktail, into a parked police vehicle. The van had several officers in the front seat. No officers were harmed, the device did not ignite, and the extent of the damage to the vehicle was minimal.

Offense Level Computation

Count 2:

PSR ¶ 21 The base offense level which appropriately reflects Ms. Doe’s conduct is §2K1.4(a)(4). Ms. Doe’s conduct did not result in a substantial risk of death or serious bodily injury to another person, so a base offense level of U.S.S.G. §2K1.4(a)(1) or §2K1.4(a)(2) is improper.

§2K1.4(a)(4) is the appropriate base offense level.

§2K1.4(a)(4) is the base level offense that most accurately reflects the reality of the property damage caused by Ms. Doe’s conduct. This base level offense starts at 2 plus the offense level of 6 from §2B1.1 (Theft, Property Destruction, and Fraud) which leaves Ms. Doe with a base offense level of 8.

Ms. Doe did not create a substantial risk of death or serious bodily injury under USSG §2K1.4(a)(1) or §2K1.4(a)(2), knowingly or otherwise. Thus, a base level offense under USSG §2K1.4(a)(1) is improper.

A base level offense under USSG §2K1.4(a)(1) requires that the defendant “knowingly” created a serious risk of bodily injury or death. *See United States v. Ram*, 101 F.3d 107 (2d Cir. 1996) (noting that the Second Circuit has not determined what *level* of knowledge is required, but holding §2K1.4(a)(1) applied because the defendant had actual knowledge of a substantial risk since the fire took place on the ground floor of an occupied, residential building); *see also United States v. Marji*, 158 F.3d 60, 63–64 (2d Cir. 1998) (holding that the base level offense USSG §2K1.4(a)(1) applied after observing that the district court expressly found the defendant *knew* the apartments above the fire were occupied). Moreover, the base level offense of 2K1.4(a)(1) has not been applied in substantially similar cases. *See, e.g., United States v. Tindal*, 21 CR 6038 (CJS) (applying base level offense of 2K1.4(a)(2)(A) after defendant plead guilty to 18 U.S.C. § 2101 (a) (Riot) for setting fire to a police patrol vehicle), Dkt. No. 29.

Ms. Doe’s position has remained consistent throughout. Ms. Doe believed the police van she damaged was empty. In Ms. Doe’s post-arrest statements, she repeatedly noted that “the vehicle appeared abandoned.” PSR ¶ 11. Ms. Doe did not intend to hurt anyone. Plainly, Ms. Doe did not knowingly create a risk of

serious bodily injury, her sole goal in throwing the bottle was to express her anger as part of protests surrounding the murder of George Floyd. Although two of the van windows were shattered, no one inside the van was hurt.

Moreover, USSG §2K1.4(a)(1) or §2K1.4(a)(2) are not the appropriate base level offense because the offense did not create a substantial risk of death or serious bodily injury. The bottle that was thrown did not create an actual risk of injury as an incendiary device. The bottle did not contain a flammable or incendiary liquid; was not shown to be capable of igniting; and it did not shatter upon impact.

The Police and FBI's own reports stated that the bottle tested negative for the presence of an ignitable liquid; therefore, the bottle did not pose a risk as an incendiary device. The Evidence Collection Unit expressly noted that residue of the liquid in the bottle would allow for accurate testing to determine the presence of a flammable liquid. DOE_XXXX. When the FBI Explosive Chemistry Laboratory performed a "solvent extraction" followed by "analysis with gas chromatography/mass spectrometry" the conclusion formed was that "no ignitable liquid residues were identified on the inner surfaces of" the bottle. DOE_XXXX.

There was not a substantial risk of serious injury as a consequence of Ms. Doe throwing the glass bottle into the empty, backseat area of the van. While Ms. Doe admitted to throwing the bottle at the van, she explained that it was not on fire; corroborating her statement is the actual video that shows the bottle was not on fire when it was thrown and that no fire resulted when the bottle struck the van. See DOE_XXX IMG_XXX at XX:XX.

Ms. Doe's only ill intent was to make a statement of protest, not to harm or seriously injure anyone. Indeed, perhaps the best indicator of the fact that there was not a substantial risk of injury is that no one was actually injured by Ms. Doe's conduct.

PSR ¶ 23

Ms. Doe did not knowingly assault a law enforcement officer in a manner which created a substantial risk of serious bodily injury under U.S.S.G. § 3A1.2(c)(1). An enhancement under this section is improper for the following reasons:

Ms. Doe did not have the mens rea necessary for a §3A1.2(c)(1) enhancement.

Where, as here, a statute incorporates language with an accepted common-law definition, construction of the statute is guided by that accepted meaning. See *United States v. Shabani*, 513 U.S. 10, 13 (1994). The Second Circuit applies the common law definition of assault to § 3A1.2. *United States v. Young*, 910 F.3d 665, 672 (2d Cir. 2018). Importantly, the Second Circuit interprets common law assault as requiring specific intent. See *United States v. Delis*, 558 F.3d 177, 180 (2d Cir. 2009) ("[C]ommon-law assault consisted of either attempted battery or the deliberate infliction upon another of a reasonable fear of physical injury and is often described as a specific intent crime.")

While being interrogated by agents, Ms. Doe freely admitted that she could see the van was a marked NYPD vehicle. She is equally credible and consistent in explaining that she thought the van was empty and could not see anyone inside. Adamant in her belief, Ms. Doe reiterated this truth to officers at least twelve times throughout hours of interrogation. XXXX. at X:XX:XX-XX:XX:XX. The government has not proffered any evidence that indicates Ms. Doe knew there were police officers in the van or that she actually intended to harm anyone. Because Ms. Doe unequivocally believed that the police van was empty, she did not have the requisite mens rea of knowing or intending to cause serious bodily injury to a law enforcement official.

Moreover, although the PSR states that the conduct posed a substantial risk because “by igniting the van, she was creating a risk to any law enforcement officer responding to the burning van,” PSR ¶ 15, the official victim enhancement has not been applied in similar cases in this Circuit, including cases where defendants successfully detonated incendiary devices causing extensive fire damage to police vehicles.

- In *United States v. Rahman* and *United States v. Mattis*, 20-cr-203 (E.D.N.Y.) (BMC), defendants threw a lit Molotov cocktail that destroyed an NYPD vehicle. No § 3A1.2(c)(1) enhancement was applied.
- In *United States v. Shawn Jenkins*, 20-cr-639 (S.D.N.Y.) (JPC), defendant yelled “ya might wanna get out of here, I’m gonna throw this at the police,” and then proceeded to throw a lit Molotov cocktail at an NYPD vehicle, burning a vehicle belonging to an NYPD officer. No § 3A1.2(c)(1) enhancement was applied.
- In *United States v. Smith* and *United States v. Carberry*, 20-cr-544 (S.D.N.Y.) (LJL), defendants threw a lit Molotov cocktail at an NYPD van, setting it on fire. Several minutes later, as the flames subsided, they added accelerant, engulfing the police van and totally destroying it. No § 3A1.2(c)(1) enhancement was applied.
- In *United States v. Tindal*, 21-cr-6038 (W.D.N.Y.) (CJS), defendant completely destroyed a police vehicle using an aerosolized flame. No § 3A1.2(c)(1) enhancement was applied.

In this case, Ms. Doe did not know there were police officers in the van and did not intend to physically harm anyone. Such an intent is required for the §3A1.2(c)(1) enhancement to apply. Although the PSR states that “Ms. Doe knew or had reasonable cause to believe that her targets were law enforcement officers,” PSR ¶ 14, reasonable cause is not the applicable standard. Ms. Doe did not intend to target anyone, let alone law enforcement officers. As the PSR states

elsewhere, “[I]t is unclear if Ms. Doe was aware that officers were present in the van when she lobbed the device.” PSR ¶ 15.

Moreover, Ms. Doe does not qualify for the §3A1.2(c)(1) enhancement because she did not cause serious bodily injury to an officer, nor was there a substantial risk of such injury occurring.

A §3A1.2(c)(1) enhancement requires that there be a “substantial risk of serious bodily injury” to a police officer. Although, “serious bodily injury” need not actually have occurred, there must have been a “substantial risk” of serious injury. *See United States v. Ashley*, 141 F.3d 63, 68 (2d Cir. 1998). A serious bodily injury is defined under the sentencing guidelines as an “injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation.” U.S.S.G. § 1B1.1, Application Note (L). “The determination as to whether the defendant's conduct posed a ‘substantial risk of serious bodily injury’ within the meaning of § 3A1.2(b) requires an analysis of the risks to the officers in light of the court's findings as to the nature of the defendant's conduct and involves an application of the Guidelines to the facts.” 141 F.3d at 69 (citing *United States v. Weaver*, 8 F.3d 1240, 1245).

Applying the Guidelines to the facts of Ms. Doe’s conduct reveals that there was not a substantial risk of serious bodily injury to law enforcement. The PSR claims that Ms. Doe’s conduct posed a substantial risk because “by igniting the van, she was creating a risk to any law enforcement officer responding to the burning van.” PSR ¶ 15. However, the van never ignited, and there was no proof there was a risk it might ignite.

In order for the official victim enhancement to apply, a defendant must have intended to harm or cause risk of harm to a law enforcement official; Ms. Doe did neither. In order for §3A1.2(c)(1) to apply in this case, the court would have to find 1) that there was an actual risk of a fire occurring and 2) that Ms. Doe had the requisite intention for law enforcement to become seriously injured in the course of responding to a fire. There was not a risk of a fire occurring because the projectile that was thrown was inert. As previously addressed, Ms. Doe did not intend to harm anyone, nor did she have a long-term goal of creating a risk of injury in officers responding to the scene. There was no risk that a law enforcement official would become injured in responding to a burning van because the van was never on fire, nor was there proof of a substantial risk it would ignite.

Applicant Details

First Name **Jonathan**
 Last Name **Hong**
 Citizenship Status **U. S. Citizen**
 Email Address jsh162@georgetown.edu
 Address

Address

Street
8516
 City
Countrybrooke Way
 State/Territory
Maryland
 Zip
21093
 Country
United States

Contact Phone Number **4102584096**

Applicant Education

BA/BS From **Towson University**
 Date of BA/BS **May 2020**
 JD/LLB From **Georgetown University Law Center**
https://www.nalplawschools.org/employer_profile?FormID=961
 Date of JD/LLB **May 12, 2023**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Georgetown Environmental Law Review**
 Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial Internships/
Externships **No**
Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Rogers, Brishen
br553@georgetown.edu
2023346078

Thompson, Robert
rbt5@georgetown.edu

Krishnakumar, Anita
anita.krishnakumar@georgetown.edu

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Jonathan Hong
8516 Countrybrooke Way, Lutherville Timonium, MD
6/9/2023

Honorable Judge Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am writing to apply for a 2024-2025 clerkship with your chambers. I am a recent graduate at the Georgetown University Law Center where I was a Dean's List Recipient and was an executive editor of the Georgetown Environmental Law Review.

As an aspiring civil litigator with extensive research and writing experience, I believe I would make a strong addition to your chambers. During law school, I was able to obtain practical experience by helping draft an amicus brief relating to federal bankruptcy law. Out of term, I honed my research and writing skills by writing various memos for litigation partners on federal procedural issues. My experience as an executive editor on the Georgetown Environmental Law Review allowed me to engage in a leadership role while working with authors to improve their submissions.

My resume, unofficial transcript, and writing sample are submitted with this application. Georgetown has submitted my recommendations from Professor Anita Krishnakumar, Professor Brishen Rogers, and Professor Robert Thompson. I would welcome the opportunity to interview with you, and look forward to hearing from you soon.

Respectfully,

Jonathan Hong

JONATHAN HONG

401 Massachusetts Ave Apt #715 Washington, DC 20001 • 410-258-4096 • jsh162@law.georgetown.edu

EDUCATION

GEORGETOWN UNIVERSITY LAW CENTER

Juris Doctor

GPA: 3.78/4.0 Dean's List: Fall 2021-Spring 2022

Journal: Georgetown Environmental Law Review: Executive Editor

Activities: Asian Pacific American Law Students Association. Transfer Students Association.

Honors: Section 6 Graduation Commencement Speaker. Highest Grade: Mergers & Acquisitions.

Washington, DC
August 2021- May 2023

UNIVERSITY OF CONNECTICUT SCHOOL OF LAW

First-year J.D. coursework completed

GPA: 3.645/4.00 (12/135/Top 9%)

Activities: Asian Pacific American Law Students Association: 1L Representative. Club Soccer.

Hartford, CT
August 2020- May 2021

TOWSON UNIVERSITY

Bachelor of Science, Political Science and Communication Studies Minor: Business Administration

Honors: Dean's List: Fall 2017, Spring 2018, Fall 2018, Spring 2019, Fall 2019, Spring 2020

Activities: Study Abroad: Corporate Communication in the UK. Pre-Law Society: Treasurer. Kappa Delta Rho: Fundraising Chair. Club Lacrosse. Tigers Toastmasters. Future Business Leaders of America: Social Media Coordinator.

Towson, MD
May 2020

EXPERIENCE

Bankruptcy Practicum

Student Researcher

- Researched court cases regarding the use of the "Texas Two Step" and Bad Faith.
- Assisted preparing an amicus brief for future Supreme Court appellate litigation.
- Worked with students to draft memos relating to bankruptcy appellate litigation.

Washington, DC
January 2023- Present

Dentons US LLP

Summer Associate

- Conducted research regarding preliminary procedural issues in high level complex litigation.
- Created signatory pages and provided assistance in closing transactions.
- Represented client in Pro-Bono representation through U-Adjustment Process.

New York, NY
June 2022- Aug 2023

Brenner, Saltzman, & Wallman

Summer Associate

- Conducted legal research on diverse legal matters involving divorce, employment, and housing disputes.
- Drafted motions to strike in response to complaints filed by plaintiffs.
- Assisted settlement conferences with opposing counsel.
- Researched and Conducted legal analysis involving complex corporate legal issues.

New Haven, CT
June 2021-Present

Georgetown Environmental Law Review

Executive Editor

- Provided cite checks for student notes and author submissions in accordance with bluebook requirements.
- Communicated with authors regarding substantive line edits and structural changes.
- Researched relevant legal issues regarding the environment and securities regulation.

Washington, DC
August 2022- Present

Office of the Public Defender

Legal Intern

- Conducted legal research and drafted office memoranda.
- Prepared and drafted legal documents for trial.
- Reviewed and outlined video and audio tapes.
- Attended court with trial attorneys to witness hearings, trials, and judgements.

Towson, MD
January 2019 – June 2019

Relevant Coursework

- Procedural Coursework: Federal Courts, Evidence, Criminal Procedure, Administrative Law, Legislation and Regulation, Statutory Interpretation
- Corporate Coursework: Corporations, Securities Regulation, Mergers & Acquisitions, Bankruptcy Law
- Labor and Employment Coursework: Employment Discrimination, Employment Law, Labor Law

University of Connecticut

Page 1 of 1

Unofficial Transcript

Name: Jonathan Hong
Student ID: 2920553

Print Date: 06/28/2021

End of Unofficial Transcript

Beginning of Law Record**Fall 2020 (2020-08-31 - 2020-12-22)**

Program: Juris Doctor 3 Yr. Day
Plan: Three Year Day Division Major

Course	Description	Attempted Credits	Earned Credits	Grade	Grade Points
LAW 7500	Civil Procedure	4.00	4.00	B+	13.200
LAW 7505	Contracts	4.00	4.00	A-	14.800
LAW 7510	Criminal Law	3.00	3.00	A	12.000
LAW 7518	Lgl Practice: Rsrch & Writing	3.00	3.00	A	12.000
LAW 7530	Torts	3.00	3.00	A-	11.100
		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Semester GPA	3.712 Semester Totals	17.00	17.00	17.00	63.100
Cumulative GPA	3.712 Cumulative Totals	17.00	17.00	17.00	63.100

Spring 2021

Program: Juris Doctor 3 Yr. Day
Plan: Three Year Day Division Major

Course	Description	Attempted Credits	Earned Credits	Grade	Grade Points
LAW 7519	Lgl Practice: Negotiation	1.00	1.00	P	0.000
LAW 7520	Lgl Practice: Intrv, Cnsl & Adv	3.00	3.00	B+	9.900
LAW 7525	Property	4.00	4.00	B	12.000
LAW 7540	Constitutional Law, An Intro	4.00	4.00	A	16.000
LAW 7987	Legislation and Regulation	3.00	3.00	A	12.000
Class rank: 1st Quintile (12/135)					
		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Semester GPA	3.564 Semester Totals	15.00	15.00	14.00	49.900
Cumulative GPA	3.645 Cumulative Totals	32.00	32.00	31.00	113.000

Fall 2021 (2021-08-30 - 2021-12-21)

Program: Juris Doctor 3 Yr. Day
Plan: Three Year Day Division Major

Course	Description	Attempted Credits	Earned Credits	Grade	Grade Points
LAW 7554	Compliance: Legal Perspective	3.00	0.00		0.000
LAW 7650	Environmental Law	3.00	0.00		0.000
LAW 7661	Federal Income Tax	3.00	0.00		0.000
LAW 7806	Renewable Energy Law	3.00	0.00		0.000
LAW 7980	Unfair/Deceptive Trade Prac	3.00	0.00		0.000
		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Semester GPA	0.000 Semester Totals	15.00	0.00	0.00	0.000
Cumulative GPA	3.645 Cumulative Totals	47.00	32.00	31.00	113.000

Law Career Totals

Cumulative GPA	3.645 Cumulative Totals	47.00	32.00	31.00	113.000
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This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Jonathan S. Hong
GUID: 801271066

Course Level: Juris Doctor

Transfer Credit:
 University of Connecticut
 School Total: 31.00

Entering Program:
 Georgetown University Law Center
 Juris Doctor
 Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	121	02	Corporations Robert Thompson	4.00	A	16.00	
LAWJ	146	08	Environmental Law Lisa Heinzerling	3.00	P	0.00	
LAWJ	150	05	Employment Discrimination Jamillah Williams	3.00	A-	11.01	
LAWJ	1526	05	The Law of Autonomous Vehicles Edward Walters	2.00	B+	6.66	
LAWJ	1617	08	Entrepreneurship: The Lifecycle of a Business David Fogel	2.00	A	8.00	
				EHrs	QHrs	QPts	GPA
Current				14.00	11.00	41.67	3.79
Cumulative				45.00	11.00	41.67	3.79
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	128	08	Criminal Procedure Abbe Lowell	2.00	B+	6.66	
LAWJ	1468	05	Business and Financial Basics for Lawyers Brian Sawers	2.00	P	0.00	
LAWJ	263	09	Employment Law Jamillah Williams	3.00	A	12.00	
LAWJ	361	08	Professional Responsibility Elaine Block	2.00	A	8.00	
LAWJ	396	05	Securities Regulation Donald Langevoort	4.00	A	16.00	
Dean's List 2021-2022							
				EHrs	QHrs	QPts	GPA
Current				13.00	11.00	42.66	3.88
Annual				27.00	22.00	84.33	3.83
Cumulative				58.00	22.00	84.33	3.83
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	025	05	Administrative Law Anita Krishnakumar	3.00	A	12.00	
LAWJ	165	02	Evidence Michael Pardo	4.00	B+	13.32	
LAWJ	1782	05	Statutory Interpretation Theory Seminar Anita Krishnakumar	3.00	A-	11.01	
LAWJ	264	05	Labor Law: Union Organizing, Collective Bargaining, and Unfair Labor Practices Brishen Rogers	3.00	A	12.00	

-----Continued on Next Column-----

				EHrs	QHrs	QPts	GPA
Current				13.00	13.00	48.33	3.72
Cumulative				71.00	35.00	132.66	3.79
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	054	08	Bankruptcy Law	2.00	A-	7.34	
LAWJ	1316	05	Bankruptcy Advocacy	4.00	B+	13.32	
LAWJ	1447	08	Mediation Advocacy Seminar	2.00	A-	7.34	
LAWJ	178	05	Federal Courts and the Federal System	3.00	P	0.00	
LAWJ	434	08	Mergers and Acquisitions	3.00	A+	12.99	
Transcript Totals							
				EHrs	QHrs	QPts	GPA
Current				14.00	11.00	40.99	3.73
Annual				27.00	24.00	89.32	3.72
Cumulative				85.00	46.00	173.65	3.78
End of Juris Doctor Record							

Name: Jonathan S. Hong
 Student ID: 0642842
 Birthdate: 01-19-####

Towson University

OFFICE OF THE REGISTRAR
 8000 YORK ROAD
 TOWSON, MARYLAND 21252-0001

Unofficial Transcript

Print Date: 06-30-2021

Degrees Awarded

Degree: Bachelor of Science
 Confer Date: 05-20-2020
 Degree GPA: 3.591
 Plan: Communication Studies
 Plan: Political Science
 Plan: Business Administration Minor

Course	Description	Attempted	Earned	Grade	Points
ECON 201	MICROECONOMIC PRINCIPLES	3.00	3.00	C	6.000
ENGL 102	WRITING FOR LIBERAL EDUCAT	3.00	3.00	B	9.000
GEOG 101	PHYSICAL GEOGRAPHY	3.00	3.00	C+	6.990
POSC 101	INTRO TO POLITICAL SCIENCE	3.00	3.00	B+	9.990
THEA 204	CREATING COMMUNITIES OF ACTION	3.00	3.00	A	12.000
Term GPA: 2.932		15.00	15.00	15.00	43.980
Cum GPA: 2.961		30.00	30.00	27.00	79.950
				GPA Hrs	

Beginning of Undergraduate Record

Fall 2016

Program: Bachelor of Science
 Plan: Unknown Major

Course	Description	Attempted	Earned	Grade	Points
ECON 201	MICROECONOMIC PRINCIPLES	3.00	0.00	W	0.000
POSC 103	AMERICAN NATIONAL GOVERNMENT	3.00	3.00	B+	9.990
RLST 203	INTRODUCTION TO ISLAM	3.00	3.00	C+	6.990
TSEM 102	TOWSON SEMINAR	3.00	3.00	B+	9.990
Topic: POSC: Religion & Politics					
Term GPA: 2.997		12.00	9.00	9.00	26.970
Cum GPA: 2.997		12.00	12.00	9.00	26.970

Transfer Credit from Community Coll Baltimore Cnty

Applied Toward Bachelor of Science Program

Course	Description	Attempted	Earned	Grade	Points
PSYC 101	INTRODUCTION TO PSYCHOLOGY	3.00	3.00	B	0.000
Course Trans GPA: 0.000		3.00	3.00	0.000	
Transfer Totals:		3.00	3.00	0.000	
Term GPA: 2.997		12.00	9.00	9.00	26.970
Cum GPA: 2.997		12.00	12.00	9.00	26.970

Mini 2017

Program: Bachelor of Science
 Plan: Unknown Major

Course	Description	Attempted	Earned	Grade	Points
COMM 131	FUNDAMENTALS SPEECH COMM	3.00	3.00	B	9.000
Term GPA: 3.000		3.00	3.00	3.00	9.000
Cum GPA: 2.998		15.00	15.00	12.00	35.970

Sprg 2017

Program: Bachelor of Science
 Plan: Political Science Major
 Plan: Business Administration Minor

Sumr 2017

Program: Bachelor of Science
 Plan: Political Science Major
 Plan: Business Administration Minor

Course	Description	Attempted	Earned	Grade	Points
MATH 231	BASIC STATISTICS	3.00	3.00	B-	8.010
PHIL 103	INTRODUCTION TO ETHICS	3.00	3.00	B+	9.990
Term GPA: 3.000		6.00	6.00	6.00	18.000
Cum GPA: 2.968		36.00	36.00	33.00	97.950
				GPA Hrs	

Fall 2017

Program: Bachelor of Science
 Plan: Communication Studies and Political Science Major
 Plan: Business Administration Minor

Course	Description	Attempted	Earned	Grade	Points
COMM 215	INTERPER COMM	3.00	3.00	A-	11.010
ECON 202	MACROECONOMIC PRINCIPLES	3.00	3.00	B	9.000
POSC 107	INTRO/ INTERNATNL RELATIONS	3.00	3.00	A-	11.010
POSC 207	STATE GOVERNMENT	3.00	3.00	A	12.000
RLST 209	RELIGIOUS TRADITIONS OF ASIA	3.00	0.00	W	0.000
Term GPA: 3.585		15.00	12.00	12.00	43.020
Cum GPA: 3.133		51.00	48.00	45.00	140.970

Dean's List

Mini 2018

Program: Bachelor of Science
 Plan: Communication Studies and Political Science Major
 Plan: Business Administration Minor

Course	Description	Attempted	Earned	Grade	Points
COMM 201	COMMUNICATION THEORY	3.00	3.00	B+	9.990
Term GPA: 3.330		3.00	3.00	3.00	9.990
Cum GPA: 3.145		54.00	51.00	48.00	150.960
				GPA Hrs	

Name: Jonathan S. Hong
 Student ID: 0642842
 Birthdate: 01-19-####

Towson University

OFFICE OF THE REGISTRAR
 8000 YORK ROAD
 TOWSON, MARYLAND 21252-0001

Unofficial Transcript

Sprg 2018
 Program: Bachelor of Science
 Plan: Communication Studies and Political Science Major
 Plan: Business Administration Minor

Course	Description	Attempted	Earned	Grade	Points
COMM 303	ADV PUBL SPEAKNG	3.00	3.00	A-	11.010
FMST 360	DIVERSITY, CULT, TEAM DYNAMICS	3.00	3.00	B	9.000
GEOG 121	PHYSICAL GEOLOGY	4.00	4.00	PS	0.000
POSC 301	POLITICAL RESEARCH I	3.00	3.00	A-	11.010
POSC 305	URBAN GOVERNMENT AND POLITICS	3.00	3.00	A	12.000
GPA Hrs					
Term GPA:	3.585	Term Totals:	16.00	16.00	43.020
Cum GPA:	3.233	Cum Totals:	70.00	67.00	193.980

Dean's List

Sumr 2018
 Program: Bachelor of Science
 Plan: Communication Studies and Political Science Major
 Plan: Business Administration Minor

Course	Description	Attempted	Earned	Grade	Points
ACCT 201	PRINCIPLES OF FINANCIAL ACCT	3.00	3.00	B	9.000
COMM 300	RESEARCH METHODS	3.00	3.00	A-	11.010
GPA Hrs					
Term GPA:	3.335	Term Totals:	6.00	6.00	20.010
Cum GPA:	3.242	Cum Totals:	76.00	73.00	213.990

Fall 2018
 Program: Bachelor of Science
 Plan: Communication Studies Major
 Plan: Political Science Major
 Plan: Business Administration Minor

Course	Description	Attempted	Earned	Grade	Points
COMM 304	PERSUASION	3.00	3.00	A	12.000
COMM 331	ADVOC & ARGUMT	3.00	3.00	A	12.000
MKTG 341	PRINCIPLES OF MARKETING	3.00	3.00	A	12.000
POSC 447	INTL LAW AND ORG	3.00	3.00	A	12.000
POSC 475	SPEC TOPICS POSC	3.00	3.00	A	12.000
Topic:	Ethics /Revolutionary Politics				
GPA Hrs					
Term GPA:	4.000	Term Totals:	15.00	15.00	60.000
Cum GPA:	3.383	Cum Totals:	91.00	88.00	273.990

Dean's List

Mini 2019
 Program: Bachelor of Science
 Plan: Communication Studies Major
 Plan: Political Science Major
 Plan: Business Administration Minor

Course	Description	Attempted	Earned	Grade	Points
COMM 311	RHETORICAL THEORY & CRITICISM	3.00	3.00	A	12.000
GPA Hrs					
Term GPA:	4.000	Term Totals:	3.00	3.00	12.000
Cum GPA:	3.405	Cum Totals:	94.00	91.00	285.990

Sprg 2019
 Program: Bachelor of Science
 Plan: Communication Studies Major
 Plan: Political Science Major
 Plan: Business Administration Minor

Course	Description	Attempted	Earned	Grade	Points
LEGL 225	LEGAL ENVIRONMENT OF BUSINESS	3.00	3.00	A	12.000
MNGT 361	LEADERSHIP AND MANAGEMENT	3.00	3.00	A	12.000
POSC 375	PUBLIC ADMINISTRATION	3.00	3.00	A	12.000
POSC 422	THE SUPREME COURT	3.00	3.00	A	12.000
POSC 493	INTERNSHIP I	3.00	3.00	A	12.000
GPA Hrs					
Term GPA:	4.000	Term Totals:	15.00	15.00	60.000
Cum GPA:	3.495	Cum Totals:	109.00	106.00	345.990

Dean's List

Sumr 2019
 Program: Bachelor of Science
 Plan: Communication Studies Major
 Plan: Political Science Major
 Plan: Business Administration Minor

Course	Description	Attempted	Earned	Grade	Points
ACCT 202	PRINCIPLES / MANAGERIAL ACCT	3.00	3.00	A	12.000
GPA Hrs					
Term GPA:	4.000	Term Totals:	3.00	3.00	12.000
Cum GPA:	3.510	Cum Totals:	112.00	109.00	357.990

Fall 2019
 Program: Bachelor of Science
 Plan: Communication Studies Major
 Plan: Political Science Major
 Plan: Business Administration Minor

Course	Description	Attempted	Earned	Grade	Points
COMM 419	ORGANIZATIONAL COMMUNICATION	3.00	3.00	A	12.000
COMM 477	INTERCULTURAL COMMUNICATION	3.00	3.00	A-	11.010
LEGL 471	REAL ESTATE LAW	3.00	3.00	A-	11.010
POSC 418	CONSTITUTIONAL LAW AND POLITICS	3.00	3.00	A-	11.010
POSC 436	U.S. FOREIGN POLICY	3.00	3.00	A	12.000
GPA Hrs					
Term GPA:	3.802	Term Totals:	15.00	15.00	57.030
Cum GPA:	3.547	Cum Totals:	127.00	124.00	415.020

Name: Jonathan S. Hong
 Student ID: 0642842
 Birthdate: 01-19-####

Towson
University

OFFICE OF THE REGISTRAR
 8000 YORK ROAD
 TOWSON, MARYLAND 21252-0001

Unofficial Transcript

Dean's List

Mini 2020

Program: Bachelor of Science
 Plan: Communication Studies Major
 Plan: Political Science Major
 Plan: Business Administration Minor

Course	Description	Attempted	Earned	Grade	Points
COMM 470	TOPICS IN PUBLIC DISCOURSE	3.00	3.00	A	12.000
Topic:	Corporate Communication in UK				
Topic:	TU Faculty-Led Study Abroad				
<u>GPA Hrs</u>					
Term GPA:	4.000	Term Totals:	3.00	3.00	12.000
Cum GPA:	3.559	Cum Totals:	130.00	127.00	427.020

Sprg 2020

Program: Bachelor of Science
 Plan: Communication Studies Major
 Plan: Political Science Major
 Plan: Business Administration Minor

Course	Description	Attempted	Earned	Grade	Points
COMM 231	NONVERBAL COMM	3.00	3.00	A	12.000
FIN 330	ESSENTIALS OF FINANCIAL MNGT	3.00	3.00	A	12.000
POSC 481	SEM: AMER GOVT & PUBLIC POLICY	3.00	3.00	A	12.000
SOCI 101	INTRODUCTION TO SOCIOLOGY	3.00	3.00	A-	11.010
<u>GPA Hrs</u>					
Term GPA:	3.918	Term Totals:	12.00	12.00	47.010
Cum GPA:	3.591	Cum Totals:	142.00	139.00	474.030

Spring 2020 courses were completed during a state and national emergency.

Dean's List

Undergraduate Career Totals

Cum GPA:	3.591	Cum Totals:	142.00	139.00	132.00	474.030
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Catalog Year 2016-2017

End of Undergraduate Record
 End of Transcript

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Jonathan Hong strongly for a clerkship in your chambers. Jonathan took my Labor Law class in the Fall of 2021. Based on his performance in my classes and our meetings outside of class, I feel well-qualified to assess his abilities and promise as an attorney.

Jonathan's work in my class was outstanding. He was always well-prepared and made insightful contributions to class discussion. Whenever I called on him, he was able to quickly summarize the key doctrine, and to recognize and analyze the nuances in the caselaw. He could also recognize the broader implications of cases, analyzing how they would advance or limit broader employers' legitimate interests in efficient production, or broader social goals such as employee voice and equality. I was unsurprised to learn that his final exam was one of the best in the class, with very strong writing and legal analysis.

As I understand, Jonathan is planning to work at a major law firm after graduation, but later to transition to plaintiff-side work. He may specialize in labor and employment law. As you'll see, his performance in all his classes in that field has been excellent, as has his performance in corporate and securities law. He is hoping to clerk in order to further develop his research, writing, and analytical skills, and also to gain exposure to a broader variety of issue areas within the law.

Jonathan has also had a somewhat unusual educational path, which signals to me that he has taken his education and professional training very seriously. He went to college at Towson University, then attended the University of Connecticut Law School for his 1L year before transferring to Georgetown as a 2L. In my experience, students with similar educational backgrounds who thrive in law school often have a maturity beyond their years, and end up being among the strongest and most diligent attorneys.

Having gotten to know Jonathan outside of class, I can also say that he has strong interpersonal skills. He is quite easy to get along with, thoughtful, and trustworthy. I would not hesitate to recommend him highly to other legal employers, as I expect that those qualities, together with his analytical skills, will make him a very successful attorney and an excellent co-worker.

In short, I strongly recommend Jonathan for a clerkship in your chambers. I believe he would be outstanding in that role. If I can be of assistance in any other way, please do not hesitate to contact me.

Sincerely,

Brishen Rogers
Professor of Law

Brishen Rogers - br553@georgetown.edu - 2023346078

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to urge your consideration of Jonathan Hong as a clerk in your chambers. He was a student in my corporations class last fall and mergers in the spring. They were large classes (about 115 in the fall and 70 in the spring). In the merger class his exam was one of two that separated themselves from the A group by a large margin resulting in an A+ grade for the course. In the corporations class, the exam was also well done and very complete, earning an A which put it in the top group of papers outside of the top 1%.

I would add two more things if it might be helpful. I had not initially picked him out in class as someone whose performance might be distinctive. It was at the end of the semester in a couple of office hour sessions where a half dozen students had shown up at the same time for what became a longer discussion that required putting together multiple points from the course. I made a mental note that he got it better than the rest. The second observation is that because I teach a large bar course in the fall semester of students' second year, I tend to get a noticeable number of transfer students, mixed in with those who have been together for first year. That can be an intimidating environment for the outsider that dampens learning and participation. I think he adapted very well in that setting. I encourage you to review his resume and references and to talk to him if you think there might be a fit.

Sincerely,

Robert B. Thompson
Peter P. Weidenbruch Jr. Professor of Law

Robert Thompson - rbt5@georgetown.edu

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It gives me great pleasure to recommend Jonathan Hong, who has applied to serve as a law clerk in your chambers. Jonathan is bright, reliable, and very thoughtful—an excellent student and person. I believe he would make a great law clerk.

I got to know Jonathan during the 2022-2023 academic year, when he was a student in my Statutory Interpretation Theory seminar and in my Administrative Law class. The seminar had only 22 students and involved a lot of in-class discussion, so I got to know the students quite well. During that class, I spoke regularly with Jonathan in class and supervised a paper he wrote about a proposed SEC rule that would regulate greenhouse gases. In class, Jonathan was a solid contributor who could be counted on to chime in regularly and add value. He was always well-prepared and refreshingly honest in his responses. The paper Jonathan wrote, *An Interpretive Approach to Regulating Greenhouse Emissions through the Securities Laws*, analyzes the SEC's proposed rule and the likelihood that it would be upheld by courts. In the end, it concludes that there are strong textualist and purposivist arguments that the SEC does not have the authority to adopt the proposed rule. It is a very solid, well-researched and analytic paper that provides a deep-dive into an interesting and complicated topic.

Jonathan also was in my large Administrative Law class (100 students) and was well-prepared in that class as well, although I did not get to speak with him as deeply or regularly in that class. In both classes, Jonathan was a strong student who could be counted on to engage with the material and offer meaningful insights.

Beyond his excellence in the classroom, Jonathan is a valued member of the Georgetown Law community. He served as the Executive Editor of the *Georgetown Environmental Law Review*—a time-consuming job—and was active in the Asian Pacific American Law Students Association and the Transfer Students Association.

In short, I believe that Jonathan would make a strong law clerk—he is smart, hard-working, and responsible.

Thank you for considering this recommendation, and please let me know if I can provide any additional information about Jonathan that would assist you.

Sincerely,

Anita S. Krishnakumar
Professor of Law and
Anne Fleming Research Professor
anita.krishnakumar@georgetown.edu
(917) 592-4561

Anita Krishnakumar - anita.krishnakumar@georgetown.edu

Eamon Bousa, Jonathan Hong, and Silas La Borde
3/22/2023

Writing Sample Description

The following writing sample is an Amicus Brief Draft Section written during my Bankruptcy Advocacy Practicum. The brief is my own work and has not been edited by any professors or students. The factual predicate of the brief is on J&J's recent bankruptcy litigation relating to Talc liabilities. The assignment required independent legal research with minimal feedback.

Eamon Bousa, Jonathan Hong, and Silas La Borde
3/22/2023

I. THE FAILURE TO PUT JJCI INTO BANKRUPTCY SUBVERTS MULTIPLE
CODE PROVISIONS AND ALLOWS IT TO BENEFIT FROM THE SAFE HAVEN
ASPECTS OF THE BANKRUPTCY CODE WITHOUT PROPERLY FILING.

A. JJCI violated 11 U.S.C. § 541 by not submitting its assets to the bankruptcy estate.

JJCI's use of the TBOC is not compatible with § 541 which requires all interests of the debtor to be placed into the bankruptcy process through the bankruptcy "estate." § 541 explicitly defines the estate as comprising "[a]ll interests of the debtor . . . as of the commencement of the case." Here, JJCI did not submit its assets to the bankruptcy court's jurisdiction. Instead, the bad faith filing subjected Old JJCI's talc liabilities to bankruptcy while excluding access to JJCI's operational assets. Therefore, JJCI's use of LTL allowed it to subvert the Code's requirements under § 541. This filing directly conflicts with § 541 by enabling Old JJCI to avoid submitting all of its interests to the bankruptcy court's jurisdiction.

JJCI is impermissibly benefiting from mandatory bankruptcy consolidation of talc claimants without submitting all their assets to the bankruptcy court's jurisdiction.¹ This use of the Code violates the "basic bankruptcy bargain" of full disclosure of one's financial situation for a discharge of nearly all debts. By refusing to submit its assets to the bankruptcy court's jurisdiction, JJCI is just one example of a "bankruptcy grifter"—an organization that receives the substantive benefits of bankruptcy but takes on a mere fraction of the burdens. Lindsey D. Simon, *Bankruptcy Grifters*, 131 Yale L.J. 1157 (2022). Permitting JJCI's use of

¹ Ralph Brubaker, *Mandatory Aggregation of Mass Tort Litigation in Bankruptcy*, 131 Yale L.J. Forum 960, 995 (2022).

Eamon Bousa, Jonathan Hong, and Silas La Borde
3/22/2023

the TBOC would encourage lawlessness under the Code and a consequent diminution of the “basic bankruptcy bargain.”

JJCI is impermissibly utilizing the TBOC in order to escape liability from talc claims. JJCI has violated 11 U.S.C. § 502 by placing talc claims against JJCI into bankruptcy through LTL. Pursuant to § 502, the bankruptcy estate is limited to property of and claims against the debtor.² In this filing, since LTL is the debtor, J&J is a third-party non-debtor entity. Here, LTL is intentionally adding legal claims to bankruptcy that lie against non-debtor JJCI. This practice permits JJCI to avoid legal liability to claimants who have lost the opportunity to recover directly from JJCI. *Id.* JJCI’s use of the TBOC restricts claimants from recovering from responsible parties without subjecting themselves to the necessary disclosure and oversight requirements under the Code. This utilization of the TBOC is fundamentally incompatible with the basic bankruptcy bargain and wrongfully diminishes creditor’s rights without adequate protection.

B. JJCI’s failure to file impermissibly allows it to avoid the mandatory financial disclosures required by 11 U.S.C. § 521.

By filing LTL for bankruptcy, JJCI avoided providing disclosures that would have helped creditors make informed decisions about the reorganization plan. The Bankruptcy Code imposes strict obligations on debtors to file complete and accurate financial disclosures. *Matter of Bayless*, 78 B.R. 506, 509 (Bankr. S.D. Ohio 1987). Under 11 U.S.C. § 521, debtors are required to provide a schedule of their assets and liabilities, statement of the debtor’s financial affairs, and a schedule of their current income and expenditures. By

² *Abusing Chapter 11: Corporate Efforts to Side-Step Accountability Through Bankruptcy*” Before the Senate Committee on the Judiciary, Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights, (Written Testimony of Hon. Judith Klaswick Fitzgerald (Ret.) 1, 10.

Eamon Bousa, Jonathan Hong, and Silas La Borde
3/22/2023

providing these statements, creditors are given access to pertinent information and allowed to adequately examine the debtor. JJCI was able to completely bypass this process by filing a “surrogate” debtor (LTL) with no legitimate assets, business operations, or employees. Permitting this practice conflicts with the Code’s fundamental disclosure policies.

JJCI’s use of the TBOC, allows them to avoid necessary public accountability which encourages future tortious conduct. § 521 imposes strict obligations on the debtor to provide creditors with complete and accurate information. Judge Fitzgerald accurately states that failing to file JJCI “affords an escape from accountability by the entities who are responsible for the harms caused and able to pay for them.” If JJCI were to file for bankruptcy, § 521 would require providing the public with substantive financial information. Instead, JJCI is able to avoid this by subjecting LTL to bankruptcy. By avoiding filing, JJCI is escaping public scrutiny by not disclosing information about their tort claims and business operations. This allows JJCI to avoid the price of reputational injury that normally accompanies a bankruptcy filing. JJCI should not be permitted to avoid liability and accountability through its bad faith utilization of the TBOC.

JJCI is impermissibly avoiding compliance with periodic reporting obligations under 11 U.S.C. § 1106. JJCI’s use of the TBOC is incompatible with complying with their duties as debtors in possession under § 1106. 11 U.S.C. § 1107 requires debtors in possession to have the same duties as trustees per § 1106. Therefore, § 1106 requires debtors to furnish information concerning the estate and to provide periodic reports of their business operations in accordance with 11 U.S.C. § 704. This provision establishes a duty on the debtor to provide creditors with information on request. The duty enhances creditors’ ability to examine the debtor and obtain information to assist them in making informed decisions. Once again, JJCI is avoiding complying with future disclosures by filing LTL into bankruptcy. JJCI is intentionally utilizing the TBOC in order to avoid their otherwise statutorily mandated

Eamon Bousa, Jonathan Hong, and Silas La Borde
3/22/2023

duties under the code. This practice is inconsistent with the duties of debtors under § 1106 and cannot be permitted by this court.

C. JJCI is impermissibly avoiding its obligations to provide creditors the opportunity to orally examine the debtor under 11 U.S.C. § 341.

By filing LTL for bankruptcy, JJCI was not required to attend a § 341 meeting and therefore, subverted creditor's ability to question the debtor about its financial affairs. 11 U.S.C. § 343 requires the debtor to attend a § 341 meeting that provides creditors the opportunity to examine the debtor. § 341 mandates a meeting of creditors which permits the Trustee and creditors an opportunity to question the debtor and obtain information about the bankruptcy. This provision guarantees an opportunity for creditors to ask the debtors questions on the record. Simon, *Bankruptcy Grifters*, *supra*, at 1209. JJCI has impermissibly bypassed this meeting requirement by filing LTL for bankruptcy. In doing so, creditors have been stripped of an opportunity to examine JJCI and ask questions about its financial affairs and liabilities. The ability to bypass a § 341 meeting provides a perverse incentive for debtors to utilize the TBOC to avoid providing disclosures or an opportunity to examine the affairs of the debtor. This practice is incompatible with the "basic bankruptcy bargain" as it inequitably prohibits creditors from adequately examining the debtor.

Allowing JJCI to avoid their § 341 meeting directly conflicts with the purposes of § 341— to provide creditors the opportunity to examine the debtor concerning its assets and financial affairs. 11 U.S.C. § 343. Specifically, the examination can lead to the recovery of assets for the estate, grounds to challenge the discharge of the debtor, and other relevant information to the administration of the bankruptcy estate. *In re Ladner*, 156 B.R. 664, 665 (Bankr. D. Colo. 1993). Attending the meeting is one of the most important responsibilities

Eamon Bousa, Jonathan Hong, and Silas La Borde
3/22/2023

for debtors in order for debtors to obtain the benefits of discharge. *Id.* The meeting is considered so important that many courts have held that the debtor's presence is mandatory with no exceptions. *In re Chandler*, 66 B.R. 334, 335 (N.D. Ga. 1986).

In practice, the § 341 meeting can provide information that leads to a denial of discharge based on inadequate disclosures. *In Re Corona*, No. 08-15924 (DHS), 2010 WL 1382122. 1, 11 (D.N.J. Apr. 5, 2010). In *Corona*, the court found that the debtor acted with reckless indifference to the truth of their initial financial disclosures and the statements they made during the § 341 meeting. JJCI's use of the TBOC allows the avoidance of the statutory check provided under § 341. This outcome gives debtors the ability to provide inadequate financial disclosures while leaving creditors without the opportunity to examine their affairs. Such a result is incompatible with the "basic bankruptcy bargain" which requires full disclosure in exchange for the benefits of discharge.

D. JJCI's failure to file avoids compliance with 11 U.S.C. § 363 because creditors are stripped of an opportunity for notice and hearing for non-ordinary course transactions.

JJCI's filing is impermissible because it enables them to conduct non-ordinary course transactions without obtaining advance court approval or providing creditors with an opportunity for notice and hearing. Under § 363(b)(1), non-ordinary course transactions require advance court approval and the opportunity for notice and hearing. § 363(b)(1) is meant to ensure that the full value of the business is available to creditors' claims. § 363(b)(1) ensures this by providing creditors an opportunity for notice and hearing regarding non-ordinary course transactions. By having LTL file, JJCI is free from their statutory obligations to provide creditors with an opportunity for notice and hearing before they

Eamon Bousa, Jonathan Hong, and Silas La Borde
3/22/2023

conduct non-ordinary course transactions. Court approval is required in order to provide scrutiny from creditors to ensure that they receive full value from debtor entities. Brubaker, *Legitimacy*, *supra*, at 5. As a result, JJCI is bypassing § 363 requirements as creditors will be unable to scrutinize the transactions without notice and a hearing. This outcome directly subverts creditor's rights while permitting the debtor to avoid ensuring that the full value of the business is available to claims. Permitting this outcome would promote lawlessness under the Code, as JJCI would be rewarded for avoiding Code requirements that make up the "basic bankruptcy bargain."

Courts have construed the purpose of § 363 to permit businesses to continue operation while protecting creditors from the dissipation of the estate's assets. *In re Dant & Russell, Inc.*, 67 B.R. 360, 363 (D. Or. 1986) (*citing* H.R. Rep. No. 595, 95th Cong., 1st Sess. 181-82 (1977)). The underlying purpose of § 363 would be frustrated if debtors were permitted to avoid notice and hearing through their use of the TBOC. Specifically, debtors could use this loophole to avoid scrutiny for non-ordinary course transactions that shield their assets from creditors. The Supreme Court has held that "the debtor, though left in possession . . . does not operate [the business], as it did before the filing of the petition, unfettered and without restraint." *Case v. Los Angeles Lumber Prod. Co.*, 308 U.S. 106, 125 (1939). Allowing JJCI's use of the TBOC unjustly allows JJCI to operate unfettered and without restraint and is thereby incompatible with the Code's fundamental policy of oversight.

Applicant Details

First Name **Sophia**
 Middle Initial **H**
 Last Name **Houdaigui**
 Citizenship Status **U. S. Citizen**
 Email Address shoudaigui@uchicago.edu

Address
Address
Street
5454 S Shore Drive
City
Chicago
State/Territory
Illinois
Zip
60615
Country
United States

Contact Phone Number **2023526832**

Applicant Education

BA/BS From **Barnard College**
 Date of BA/BS **April 2021**
 JD/LLB From **The University of Chicago Law School**
<https://www.law.uchicago.edu/>
 Date of JD/LLB **June 1, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **University of Chicago Legal Forum**
 Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial Internships/
 Externships **No**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Professional Organization

Organizations **Just the Beginning Organization**

Recommenders

Ginsburg, Thomas
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 8, 2023

The Honorable Jamar K. Walker
United States District Court of the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510-1915 United States

Dear Judge Walker,

I am a rising third-year law student at the University of Chicago Law School, and I am applying for a clerkship in your chambers for the 2024-2025 term. Your career, particularly your time with the United States Attorney's Office for the Eastern District of Virginia, is inspiring as a young woman interested in pursuing a career in government service. My strong commitment to public service stems from my father's immigration story from Morocco to the United States. This personal drive coupled with my interest in public policy drove me to co-found Hyphenated America, a civic education platform aimed at making immigration laws and policies easier to understand for high school and college age students across the country.

Beyond my admiration for your career, my interest in clerking for the Eastern District of Virginia is deeply personal. As a Northern Virginia native, I care deeply about the Commonwealth. This passion for the state led me to write my senior thesis on Moroccan immigrant enclaves in Virginia. I conducted extensive research and published an opinion piece through the College concerning the inclusion of Middle Eastern and North African immigrants in politics throughout the South. I see a clerkship with you as an unrivaled opportunity to serve the people of the Commonwealth and learn from a committed public servant.

My professional, academic, and extracurricular experiences have prepared me well for a clerkship with your chambers. As a summer associate in Sidley Austin's New York office, I have already had the opportunity to work on various pro bono projects dedicated to criminal defense work, including advocacy of a Bronx native accused of conspiracy to distribute a controlled substance. Last summer, while interning in the Department of Justice's Office of Legal Policy, I analyzed and synthesized data to brief the Assistant Attorney General on voting rights and firearms issues. Interning in the House of Representatives and Senate for members on both sides of the political aisle had already solidified my interest in pursuing a long-term career in public service. These experiences would assist me in effectively considering multiple perspectives when reviewing briefs.

Furthermore, I want to leverage my leadership experience as your law clerk. As Managing Editor of the *University of Chicago Legal Forum*, I honed my editorial skills in the production of leading legal scholars' upcoming articles. My student comment, which centers on the domestic terrorism framework, allowed me to engage with substantive research. Additionally, this past year, I served as the Co-President of the University of Chicago's American Constitution Society chapter, the law school's largest student organization, serving over two hundred and fifty active members. Moreover, I have honed my public speaking skills by addressing international audiences, emphasizing the significance of politically empowering young women.

Please find my resume, writing sample, and law school transcript enclosed. Letters of recommendation from Professors Saul Levmore, Aziz Huq, and Tom Ginsburg will arrive under separate cover. Thank you for your consideration.

Sincerely,
/s/ Sophia Houdaigui
Sophia Houdaigui

Sophia Houdaigui

5454 S. Shore Drive, Chicago, Illinois 60615 | (202) 352-6832 | shoudaigui@uchicago.edu

EDUCATION

The University of Chicago Law School, Chicago, IL

Juris Doctor, Expected June 2024

- **Honors and Awards:** Recipient of the Anna Weiss Graff Honor Scholarship
- **Activities:** *University of Chicago Legal Forum*, Managing Editor; American Constitution Society, Co-President; Immigrants' Rights Clinic, Student Attorney; Southwest Asian and North Afrikan Law Students Association, Vice President; Law School Musical, Director; Faculty Interview Committee, Student Interviewer; Peer Advisor

Barnard College, Columbia University, New York, NY

Bachelor of Arts in History, April 2021

- **Honors and Awards:** Williams Fellow for Women in Politics, Highest Distinction in Leadership Award
- **Thesis:** *Maghribiin and the Commonwealth: The Moroccan Immigrant Experience in the American South*
- **Activities:** Columbia Political Review, Athena Center Advisory Board, Columbia Musical Theatre Society, Varsity Show

PROFESSIONAL EXPERIENCE AND EMPLOYMENT

Sidley Austin LLP, New York, NY

Summer Associate, May 2023-Present

- Conduct research for clients on a variety of matters including white collar litigation and criminal defense

Department of Justice, Office of Legal Policy, Washington, DC

Intern, May 2022 – August 2022

- Briefed the Assistant Attorney General and prepared memoranda on issues related to national security and firearms
- Coordinated the vetting of candidates for federal judgeships and assisted in the confirmation process with the White House

Hyphenated America, Washington, DC

Co-Founder, April 2020 – January 2022

- Created and managed a civic education platform dedicated to making immigration laws and policies easier to understand
- Featured on *Al Jazeera*; published opinion piece concerning immigration education in *The Chicago Tribune*

Columbia Justice Lab, New York, NY

Research Assistant, April 2021 – August 2021

- Spearheaded a report on the relationship between youth decarceration and regional crime rates

Congressman Will Hurd of Texas-23, Washington DC

Congressional Intern, May 2019 – August 2019

- Researched and wrote memoranda concerning international affairs, national security, and immigration
- Drafted opinion pieces for Rep. Hurd published in *The Wall Street Journal*, *The Washington Post*, and *USA Today*

Guidepost Solutions, Washington, DC

Intern, May 2018 – July 2018

- Performed research for clients concerning issues related to immigration and cryptocurrency, while monitoring use of their proprietary identity SecureID program utilized by private companies

Senator Tim Kaine, Washington, DC

Congressional Intern, April 2017 – June 2017

- Conducted legislative research; assisted staff with drafting memoranda; performed administrative tasks

Brooklyn Bagel Bakery, Arlington, VA

Cashier, Barista, and Social Media Coordinator, June 2015 – August 2021

- Managed opening and closing of registers, customer service, and maintenance of all social media content

COMMUNITY INVOLVEMENT

Running Start, Washington, DC

Ambassador and Independent Speaker, May 2015 – Present

- Elected as Ambassador in a national competition for Running Start, a nonprofit that trains young women to run for office
- Introduced a consortium before the UN; spoke alongside Senator Daschle; wrote for POLITICO's #WomenRule Newsletter

INTERESTS

- Musical theatre, comedy, reading political autobiographies, conversational Moroccan Arabic, conversational French



Name: Sophia Hannah Houdaigui
Student ID: 12334998

University of Chicago Law School

Academic Program History

Program: Law School
Start Quarter: Autumn 2021
Current Status: Active in Program
J.D. in Law

External Education

Barnard College-Columbia University
New York, New York
Bachelor of Arts 2021

Beginning of Law School Record

Autumn 2021					
Course	Description	Attempted	Earned	Grade	
LAWS 30101	Elements of the Law Lior Strahilevitz	3	3	173	
LAWS 30211	Civil Procedure Emily Buss	4	4	175	
LAWS 30611	Torts Saul Levmore	4	4	176	
LAWS 30711	Legal Research and Writing Michael Morse	1	1	178	
Winter 2022					
Course	Description	Attempted	Earned	Grade	
LAWS 30311	Criminal Law Sonja Starr	4	4	173	
LAWS 30411	Property Lee Fennell	4	4	173	
LAWS 30511	Contracts Eric Posner	4	4	176	
LAWS 30711	Legal Research and Writing Michael Morse	1	1	178	

Spring 2022			Attempted	Earned	Grade
LAWS 30712	Legal Research, Writing, and Advocacy Michael Morse		2	2	178
LAWS 30713	Transactional Lawyering Douglas Baird		3	3	173
LAWS 40301	Constitutional Law III: Equal Protection and Substantive Due Process Aziz Huq		3	3	176
LAWS 43201	Comparative Legal Institutions Thomas Ginsburg		3	3	179
LAWS 44201	Legislation and Statutory Interpretation Ryan Doerfler		3	3	177

Summer 2022
Honors/Awards
The University of Chicago Legal Forum, Staff Member 2022-23

Autumn 2022			Attempted	Earned	Grade
LAWS 42301	Business Organizations Anthony Casey		3	3	175
LAWS 46101	Administrative Law Thomas Ginsburg		3	3	178
LAWS 53219	Counterintelligence and Covert Action - Legal and Policy Issues Stephen Cowen Tony Garcia		3	3	178
LAWS 90211	Immigrants' Rights Clinic Amber Hallett		2	0	
LAWS 94120	The University of Chicago Legal Forum Anthony Casey		1	1	P

Winter 2023			Attempted	Earned	Grade
LAWS 40201	Constitutional Law II: Freedom of Speech Genevieve Lakier		3	3	175
LAWS 43282	Energy Law Joshua C. Macey		3	3	177
LAWS 53221	Current Issues in Criminal and National Security Law Meets Writing Project Requirement Designation: Michael Scudder		3	3	179
LAWS 90211	Immigrants' Rights Clinic Amber Hallett		2	0	
LAWS 94120	The University of Chicago Legal Forum Anthony Casey		1	1	P



Name: Sophia Hannah Houdaigui
Student ID: 12334998

University of Chicago Law School

		Spring 2023			
Course	Description	Attempted	Earned	Grade	
LAWS 41601	Evidence John Rappaport	3	3	176	
LAWS 43218	Public Choice and Law Saul Levmore	3	3	177	
LAWS 53456	Comparative Race, Ethnicity and Constitutional Design Thomas Ginsburg	3	0		
LAWS 90211	Immigrants' Rights Clinic Amber Hallett	2	0		
LAWS 94120	The University of Chicago Legal Forum Anthony Casey	1	1	P	

End of University of Chicago Law School



June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to recommend Sophia Houdaigui, a member of the class of 2024, for a clerkship in your chambers. Sophia is a very strong candidate. She is a very bright and engaging person, a strong lawyer and good writer, and I recommend her very highly.

I first met Sophia during the Spring Quarter of her 1L year when she enrolled in my elective course in Comparative Legal Institutions. This course is designed to encourage thinking about law from a broad interdisciplinary perspective. In particular, it looks at law across time and space, integrating literatures from political science and economics along with more conventional legal materials. We survey, among other legal systems, those of imperial China and classical Islam, focusing on judicial institutions and their core structures. Sophia was an enthusiastic class participant who always added value to the class discussion, and demonstrated the ability to think creatively in dealing with novel material. She wrote one of the stronger exams in the class, finishing in roughly the top quintile.

In the Fall of 2022, Sophia enrolled as a student in my course in Administrative Law, which is of course a field in significant flux. She was an excellent addition to the class, reflecting her abiding interest in public service. She was an engaged and constructive participant in classroom discussions, whose interventions were always helpful in moving the class forward. She demonstrated a deep understanding of the material, and her serious commitment made the class much better. Sophia's exam was above the median in the class of 60 students, which as a group was among the best I have ever taught.

This last quarter, she was in a seminar I taught on Comparative Race, Ethnicity and Constitutional Design. We were looking at alternative models of racial difference in different societies, with each student focusing on a particular country. Sophia chose Morocco, where her father was born as a member of the minority Berber community. She was just a wonderful participant in the class, and navigated sensitive material with delicacy and skill. Her paper is due at the end of the Summer Quarter so I do not yet have a grade for her, but she is a fine writer and I expect her to do well.

I have also worked with Sophia as a staff person on the Legal Forum, in my capacity as advisor to the journals. She is a beloved member of the community who gets along with others. I have also worked with her in her role with the American Constitution Society. There, she helped organize a joint event with the Federalist Society on the Ukraine invasion, in which I was a participant. She embodies the willingness to engage in dialogue across difference, which we value so much here at Chicago. For Sophia, this engagement is the core of who she is: able to hold multiple perspectives at once and eager to discuss them.

Sophia is committed to public service, particularly focusing on immigration law at this point. She has the background in administrative law needed to navigate this area, and I am sure will have a wonderful career. You will also find Sophia to be an excellent person to mentor and to work with. She will soak up ideas, and turn around assignments quickly and with great skill. She will get along with everyone in chambers.

The bottom line is that Sophia Houdaigui is simply an excellent law student, who will be a smart, hardworking, and focused clerk, as well as a superb leader thereafter. I recommend her very highly and urge you to interview her. You will not be disappointed.

Please do not hesitate to contact me for further information or detail.

Sincerely,

Tom Ginsburg

Thomas Ginsburg - tginsburg@uchicago.edu - 773-834-3087

Aziz Huq
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June 09, 2023

The Honorable Jamar Walker
 Walter E. Hoffman United States Courthouse
 600 Granby Street
 Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Sophia Houdaigui (University of Chicago Class of 2024), to the position of law clerk in your chambers. I know Sophia because I taught her in a 1L elective class on Constitutional Law: Equal Protection and Due Process, and because I have worked with her in her capacity as co-president of the University of Chicago chapter of the American Constitution Society (ACS). Sophia has an extensive background in public service, having worked with a number of elected representatives, and has put together a solid record at the law school: This earned her a place on the University of Chicago Legal Forum, where she went on to play a leadership role as a managing editor. My own experience working with her on ACS matters suggests to me that she is diligent, thorough, and very professionally capable. She will make a terrific law clerk. And I enthusiastically support her application.

Let me start with academics. As noted above, I taught Sophia in a 1L elective called Constitutional Law: Equal Protection and Due Process. The class (as I teach it) involves a great deal of constitutional and political history; it focuses on the way in which different moments in history have shaped the selection of controversies and the nature of the rules that emerge. Sophia was an active and consistently insightful contributor to the class. She wrote a very respectable exam and obtained a grade that was securely in the middle of the class's distribution. I write complex, issue-intensive exams that demand an ability to read a detailed fact pattern and immediately perceive not just the presence of a legal issue, but also a host of interactions between the legal issue and the facts, and also the several alternative (often outcome dispositive) ways of framing the issue. I identify ex ante 200 distinct points and subpoints that could be raised based on the exam prompts, and then grade students accordingly. This approach means I obtain a dispersion of grades that ensures meaningful distinction. Sophia's exam was well-written and showed a grasp of the relevant law. It did not evince any lack of legal skill, or cause for concern about her legal abilities.

More generally, Sophia was offered a very solid performance across her time so far at the law school. She has obtained good grades in a range of courses ranging from Legal Research and Writing, Administrative Law, and Comparative Legal Institutions. (Where she has fallen short has been in courses that are less law-focused, such as Transactional Lawyering: This mandatory class is very much aimed at students aiming to go into some form of business law, which I understand not to be Sophia's interest or focus. Her pattern of grades supports the conclusion that she would be a strong law clerk, fully equipped to address any of the issues that would come up in a federal chambers.

A little more context is useful to evaluate Sophia's grades, particular in relation to the grades and transcripts of students from peer schools. Unlike those peers, Chicago abjures grade inflation in favor of a very strict curve round a median score of 177 (which is a B in our argot), which is where Sophia's later scores cluster. But there is not large movement from this median and cannot be. Because Chicago grades on a normal distribution, and because it is on the quarter system, it is possible to be very precise about where a student falls in a class as a whole. This is simply not possible with a grading system of the kind used by some of our peer schools. These are seemingly designed to render ambiguous differences between the second tier of students and the third- and fourth-tiers. Students who are in fact Sophia's equals at other institutions are thus hard to distinguish from lower and higher performing students; they can hide variation in their performance, by their transcripts. This is an unfortunate effect of Chicago's effort at clarity and transparency, which tends to disadvantage (comparatively) students such as Sophia.

Beyond her academic work, Sophia has been an active member of the law school community, contributing in many different ways. In particular, she has been an absolute terrific co-president of the school's ACS chapter—indeed, so good that she and her colleague won an award from the national organization for their organizational skills, excitement, and vigor. From my perspective, the award seems more than warranted. Sophia has consistently demonstrated deep organizational capacity, a clear vision, and a deft hand in presenting often-difficult issues for a wide student audience. In addition, Sophia has taken on the labor-intensive and rather thankless role of managing editor at the University of Chicago Legal Forum. Further, she will be putting on and directed next year's law school musical: This is an immensely challenging logistical and artistic task.

Sophia has a deep commitment to public service, and I have no doubt that she would use a federal clerkship as a springboard into that kind of career. This comes from growing up in a household with a Muslim migrant father (who arrived in the United States, basically building a successful business from scratch) and a Jewish lawyer mother (who has longed worked on immigration issues). She has consistently worked in the family business since high school. During college, Sophia interned for both Democratic Senator Tim Kaine of Virginia and Republican Congressman Will Hurd of Texas, working on difficult and

Aziz Huq - huq@uchicago.edu - 773-702-9566

contentious issues such as immigration—and often ghostwriting for her bosses (for publication in places such as the Wall Street Journal and the Washington Post). She has also worked closely with Running Start, an organization that encourages young women to run for public office. At Barnard, moreover, she founded Hyphenated America, a civic education platform committed to making immigration laws and policies easier to understand.

During law school, Sophia has worked consistently and carefully to advance her public service career. Last summer, she interned at the Justice Department's Office of Legal Policy. There, she collaborated with the U.S. Attorney's Office for the Southern District of New York, as well as professionals at the Department of Homeland Security, on a range of policy and regulatory tasks. She also helped with the vetting process of candidates for federal judgeships and their confirmation with the White House.

Based on all this evidence, I have every expectation that Sophia will be a very good law clerk. I am thus a very keen supporter of her application, and very much hope you consider it seriously. I would be happy to answer any questions you have about her candidacy and can be reached at your disposal at huq@uchicago.edu or 703 702 9566.

Sincerely,

Aziz Huq

Frank and Bernice J. Greenberg Professor of Law

Aziz Huq - huq@uchicago.edu - 773-702-9566

Professor Saul Levmore
William B. Graham Distinguished Service Professor of Law
The University of Chicago Law School
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June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Sophia Houdaigui has told me of her interest in clerking for you. She is an extremely likeable and hardworking applicant who just might be the most popular person in our law school – with great insight into people and, from a professor's point of view, excellent insight into political views and the impact of law on people's lives. She will quickly become the best friend of her co-clerks, and she will bring out the best in them and the best in any team. She's a natural leader, and yet is eager to please professors and, I presume, supervisors and judges.

Sophia is a curious blend of politics and pragmatism. On the one hand, she has not met a liberal organization or cause that she does not want to champion with energy and optimism and, on the other hand, perhaps because her father owns a bagel store, she is quite sensitive to the impact of liberal politics, law, and especially criminal law on actual people who are trying to make a business flourish.

She has grown a great deal in her first two years at the University of Chicago. As you will see from her grades, she started out by memorizing the facts of cases and doing poorly on exams. And then, by her second year, she figured out what law is about and what she is here to learn. Her grades rose by leaps even as she managed organizations and brought in speakers – while getting her classmates of varying political inclinations to talk, to sponsor these speakers together, and to learn from one another.

She is also about as personable and quick as one can get. Her prior experience in acting and comedy is apparent (though she sometimes hides this skill appropriately). If you say something ironic or subtle, she will be the first in your chambers to discern the humor. I suspect she is a real catch and certainly someone to meet.

Sincerely,
Saul Levmore

Saul Levmore - s-levmore@uchicago.edu - 773-702-9494

Sophia Houdaigui

5454 S. Shore Drive, Chicago, Illinois 60615 | (202) 352-6832 | shoudaigui@uchicago.edu

Writing Sample

I prepared the attached writing sample for my Current Issues in Criminal and National Security Law course at the University of Chicago Law School. In this assignment, I was asked to prepare a majority and dissenting opinion on a fictional *Quarles* claim in the Supreme Court. To create a 10-page writing sample, I omitted the information regarding *Quarles* and *Miranda* and the facts section which details the following distinct questions. The first concerns the applicability of the public safety exception articulated in *New York v. Quarles* to terrorism-related attacks. *New York v. Quarles*, 467 U.S. 649 (1984). The second regards the scope of the “joint venture” doctrine. At 12:12 pm EST on April 1, 2021, a pipe bomb detonated in Washington, DC. As a result of the explosion, five individuals were killed and approximately fifteen were injured. The fictional petitioner, Nawaf al-Hazimi, was arrested in connection with the attack in the Republic of South Sudan. On an American plane, a team of FBI officials interviewed al-Hazimi for fourteen hours without reading him the *Miranda* warnings. al-Hazimi argues that the District Court and Court of Appeals erred in denying his motion to suppress his statements to the FBI team aboard the American aircraft. He principally challenges on the public safety exception and the “joint venture” doctrine.

JUSTICE GORSUCH delivered the opinion of the Court.

I.

We start by considering the first *Miranda* issue at hand. As previously described, a team of FBI investigators questioned al-Hazimi on the plane without providing him the *Miranda* warnings. We hold that in this instance, the “public safety” exception to the *Miranda* warning requirement applies and permits the admission of al-Hazimi’s statements.

Courts across the country maintain different standards for what may rise to the level of the “public safety” exception articulated in *Quarles*. See, e.g., *United States v. Estrada*, 430 F.3d 606, 612 (2d Cir. 2005). In *United States v. Talley*, the Sixth Circuit deemed questioning without *Miranda* warnings permissible when “officers have a reasonable belief based on articulable facts that they are in danger.” *United States v. Talley*, 275 F.3d 560, 563 (6th Cir. 2001). This “reasonable belief” involves a variety of factors including “the known history and characteristics of the suspects, the known facts and circumstances of the alleged crime, and the facts and circumstances confronted by the officer.” *United States v. Williams*, 483 F.3d 425, 428 (6th Cir. 2007). The court in *Williams* further clarified the public safety exception in mandatory terms, requiring that an officer “have reason to believe (1) that the defendant might have (or recently have had) a weapon, and (2) that someone other than police might gain access to that weapon and inflict harm with it.” *Id.*

al-Hazimi’s contention that his statements to the team of FBI investigators aboard the American aircraft should have been suppressed based on a violation of his *Miranda* rights fails because the remarks fall within the public safety exception. Under the logic articulated in *Quarles*, the team of investigators maintained reasonable belief that the public was in danger. Such “reasonable belief” stemmed directly from the known facts and circumstances of the deadly nature of the April 1 attack. Fulfilling the mandatory nature of the public safety exception as expressed in *Talley*, the investigators had strong reason to believe that (1) al-Hazimi was recently in possession of an explosive device and

(2) that another person could access an associated weapon with the petitioner and inflict further harm with it.

In similar cases to the facts at hand, wherein individuals suspected of terrorism have been questioned without *Miranda* warnings, courts across the country have deemed this process legal under the public safety exception. In *United States v. Khalil*, one of the defendants, Abu Mezer challenged the district court ruling that the “public safety” exception permitted interrogation without *Miranda* warnings. *United States v. Khalil*, 214 F.3d 111, 121 (2d Cir. 2000). Mezer specifically took issue with the admission of a particular statement to government officials. In response to being asked whether or not he intended to kill himself after detonating the pipe bombs in question, he replied “poof.” *Id.* The Second Circuit affirmed the lower court’s decision, declaring the question and Mezer’s response to be related to matters of public safety. Specifically, the court argued that it was related to public safety “given that Abu Mezer’s vision as to whether or not he would survive his attempt to detonate the bomb had the potential for shedding light on the bomb’s stability.” *Id.* As such, the associated officers were not required to administer the *Miranda* warnings.

Parallel to the defendant in *Khalil*, al-Hazimi asserts that his statements to the team aboard the aircraft should have been suppressed. He specifically argues that some of the questions were not related to issues of public safety. We cannot agree. According to the evidence presented, we have no reason to believe that the team of investigators posed any questions unrelated to the matter of public safety. Similar to the question at issue in *Khalil*, we do know that the investigators’ inquiries were aimed at “shedding light” on the April 1 attack and associated explosive devices. *Id.*

The Sixth Circuit additionally addressed the “public safety” exception with respect to bombs. In *United States v. Hodge*, while executing a search warrant for evidence of a methamphetamine lab, detective Bryan Gandy and police officer Marc Pierce asked Lonnie Hodge whether there was “anything in the house that could get anyone there hurt.” *United States v. Hodge*, 714 F.3d 380, 387

(6th Cir. 2013). After Hodge replied that there was a pipe bomb in the home, Gandy and Pierce commenced a line of questioning aimed at gaining “information about the bomb’s construction and stability.” *Id.* In reaching its conclusion, the court considered the distinct threats guns and bombs each pose, particularly given the uniquely unstable nature of explosives. *Id.* at 386. The majority in *Hodge* determined that “in a case involving a *gun*, the police must be aware of a third party who can access the gun and harm others...but in a case involving a *bomb*, the presence of third parties who can access the bomb is usually not a compelling consideration.” *Id.* *Hodge* establishes the public safety exception to be “limited to situations where the “weapon” in question is one that a person must physically handle in order for it to present a threat to officers.” *Id.*

al-Hazimi argues that under the logic of *Hodge*, his statements made aboard the aircraft were not properly admitted. Specifically, he contends that as explosive devices were involved in the April 1 attack, the potential or literal presence of third parties who could access associated pipe bombs was not a compelling consideration. However, we believe that al-Hazimi has grossly misconstrued the Sixth Circuit’s interpretation of the threat third parties pose in accessing explosive devices such as bombs. While *Hodge* did differentiate between the threat guns and bombs raise, the court deemed the officers’ questions regarding the bomb’s construction and stability acceptable. As such, we believe that the statements aboard the aircraft were properly admitted under the logic of *Hodge*.

The Eleventh Circuit addressed a similar issue concerning pipe bombs in *United States v. Spoerke*. *United States v. Spoerke*, 568 F.3d 1236 (11th Cir. 2009). The case considered whether or not the public safety exception permitted police officers to question the defendant without providing sufficient *Miranda* warnings after discovering that he was in possession of unregistered pipe bombs. The court determined that the pipe bombs posed a significant threat to the officers in question and the greater public that outweighed the interests originally articulated in *Miranda*. *Id.* at 1249.

al-Hazimi additionally argues that his statements to FBI investigators aboard the aircraft should not have been admitted under the public safety exception by differentiating the facts at hand from *Spoerke*. The petitioner specifically points to the court’s statement that the “questions were designed to discern the threat the bombs presented to the officer and the nearby public.” *Id.* He argues that the team of investigators’ questions were not designed to discern the threat of the pipe bombs associated with the April 1 attack. Specifically, he supports this assertion by pointing to the length of time that had passed since the incident – over 20 days. But the investigators’ questions were posed to determine if al-Hazimi had other explosives that could pose a threat to the public. The team’s inquiries were motivated by safety concerns, and as such, fall within the *Quarles* exception.

The application of the public safety exception to terrorism-related cases was recently explored in *United States v. Abdulmutallab*. *United States v. Abdulmutallab*, 739 F.3d 891 (6th Cir. 2014). This case concerned Umar Farouk Abdulmuttalab, often referred to as the “underwear bomber” or “Christmas Day Bomber,” a member of a violent jihadist organization affiliated with al-Qaeda. *Id.* at 895. Abdulmutallab boarded a flight on December 25, 2009 with the intention of detonating “an explosive device in his underwear.” *Id.* The device instead malfunctioned and as a result of the attempted attack, the pilot subsequently executed an emergency landing. After being transferred to a hospital for treatment, FBI Special Agent Timothy Waters questioned Abdulmutallab for approximately fifty minutes without *Miranda* warnings. *United States v. Abdulmutallab*, No. 10-20005, 2011 WL 4345243, at *1 (E.D. Mich. Sept. 16, 2011).

Affirmed by the Sixth Circuit, the district court determined that the public safety exception applies to the circumstances at hand. *Id.* at *5. The questions posed by Agent Waters “were intended to shed light on the obvious public safety concerns in this case.” *Id.* Specifically, such questions “sought to identify any other attackers or other potentially imminent attacks—information that could be used in

conjunction with other U.S. government information to identify and disrupt such imminent attacks before they could occur.” *Id.*

al-Hazimi argues that his statements to the team of FBI investigators should be suppressed in distinguishing the facts from that of *Abdulmutallab*. The petitioner emphasizes the discrepancy in questioning periods, with Abdulmutallab’s occurring for 50 minutes and his own lasting 14 hours. al-Hazimi points to the district court’s potentially restrictive language; “the agents limited their questioning to approximately 50 minutes, at which time they had sufficient information to address the threat to public safety.” *Abdulmutallab*, No. 10-20005, 2011 WL 4345243, at *6. However, the team of FBI investigators at issue also limited their questioning but necessitated more time to obtain sufficient information to address the threat at hand.

There are key factual similarities that further minimize the persuasiveness of al-Hazimi’s argument. Specifically, the court notes that Agent Waters knew of the defendant’s claim to be associated with and acting on behalf of al-Qaeda – which is almost identical to our understanding of the FBI investigators’ knowledge of al-Hazimi. The district court in *Abdulmutallab* determined that mindful of such association “and knowing the group’s history of large, coordinated plots and attacks, the agents logically feared that there could be additional, imminent aircraft attacks in the United States and elsewhere in the world.” *Id.* The team aboard the aircraft maintained similar knowledge and fear of al-Qaeda’s coordinated history and accordingly posed questions aimed at obtaining information regarding potential imminent attacks.

II.

al-Hazimi additionally argues that his statements made to South Sudanese representatives, in addition to any reference to such utterances, should not be admitted into evidence. He contends that the interview constitutes a “joint venture” between South Sudanese officials and United States law enforcement. The law has determined that “statements taken by foreign police in the absence of

Miranda warnings are admissible if voluntary.” *United States v. Yousef*, 327 F.3d 56, 145 (2d Cir. 2003). However, the “joint venture” doctrine is an established exception to this rule. The Second Circuit provides that “statements elicited during overseas interrogation by foreign police in the absence of *Miranda* warnings must be suppressed whenever United States law enforcement agents actively participate in questioning conducted by foreign authorities.” *Id.*

The Ninth Circuit additionally concluded that under this doctrine “evidence obtained through activities of foreign officials, in which federal agents substantially participated and which violated the accused’s Fifth Amendment or *Miranda* rights, must be suppressed in a subsequent trial in the United States.” *Pfeifer v. U.S. Bureau of Prisons*, 615 F.2d 873, 877 (9th Cir. 1980). “Active” or “substantial” participation refers to evidence wherein the United States “encouraged, requested, or participated in [suspect’s] interrogation or written statement.” *Yousef*, 327 F.3d at 144-145. We have not been provided sufficient evidence that American officials “actively” or “substantially” participated in the South Sudanese questioning. The United States government was only informed of an inquiry *after* it had occurred. As such, al-Hazimi has failed to demonstrate that the South Sudanese questioning rises to the level of a “joint venture.”

The questions posed to the petitioner by the team of FBI investigators while aboard the American aircraft were admissible as they did not fall within the public safety exception to the *Miranda* warnings. Additionally, al-Hazimi’s statements, or references to such statements, to South Sudanese representatives should be admitted into evidence as he has failed to establish a “joint venture” between the foreign government and that of the United States.

For these reasons, we AFFIRM.

JUSTICE KAGAN, with whom JUSTICE SOTOMAYOR joins, dissenting.

The issue at hand today serves to prove that Justice Marshall’s deep concerns regarding the public safety exception, as expressed in his perturbed dissenting opinion in *Quarles*, were correct. The majority rejects al-Hazimi’s challenge to suppress statements made to the team of FBI investigators aboard an American aircraft under the public safety exception articulated in *Quarles*. In doing so, the majority has endorsed a sweeping interpretation of the exception, illustrative of the very chaos Marshall alluded would occur as a result of the expansiveness of the public safety exception. *Quarles*, 467 U.S. at 679.

I.

The original interpretation of the public safety exception, as set forth in *Quarles*, maintains significant flaws in application. Justice Marshall noted that “disagreements of the scope of the “public-safety” exception and mistakes in its application are inevitable.” *Id.* at 680. The majority’s decision today exacerbates these mistakes by grossly expanding the exception. While already expansive, the facts at hand extend the limits of the public safety exception far beyond its current restrictions. The interrogation occurred 20 days following the attack in question and lasted 14 hours. In doing so, the court only further destroys any remaining “clarity of *Miranda* for both law enforcement officers and members of the judiciary.” *Id.* at 679. Similar to the *Quarles* majority, the government faintly contends that in withholding *Miranda* warnings, the team of FBI investigators were able to extract information from al-Hazimi they might not have had he been advised of this right. *Id.* at 685.

I do not intend to suggest that there are absolutely no instances wherein law enforcement officers in the face of an immediate threat cannot question suspects without providing the *Miranda* warnings. Even Justice Marshall’s *Quarles* dissent did concede the importance of an exception with regards to immediate threats, offering the example of a bomb. Marshall stated “if a bomb is about to explode or the public is otherwise imminently imperiled, the police are free to interrogate suspects without advising them of their constitutional rights.” *Id.* at 686. Rather, I am deeply concerned that the

court's decision today broadens the scope of the public safety exception beyond recognition and appropriate application.

Beyond this deeply concerning expansion, the majority gravely misapplies the public safety exception with respect to the facts at hand. As originally described in *Quarles*, the majority described the necessity for the lack of sufficient *Miranda* warnings; “Officer Kraft needed an answer to his question not simply to make his case against Quarles but to ensure that further danger to the public did not result from the concealment of the gun in a public area.” *Id.* at 657.

The court placed significant emphasis on the time involved in such decisions, stating “we decline to place officers such as Officer Kraft in the untenable position of having to consider, often in a matter of seconds, whether it best serves society for them to ask the necessary questions without the *Miranda* warnings.” *Id.* The team of FBI investigators interrogated al-Hazimi aboard an American aircraft for 14 hours – a period far exceeding the mere seconds in *Quarles*. As such, the majority grossly misrepresents the immediacy requirement of the public safety exception.

Additionally, the court mistakenly dismisses the petitioner's parallel to the Sixth Circuit's decision in *Hodge*. In *Hodge*, the court emphasized the fact that “the relatively limited inquiry [the officers] made was appropriately tailored to the information they possessed.” *Hodge*, 714 F.3d at 387. The 14-hour long interrogation at issue was not limited in its inquiry, as provided evidence establishes that the conversation was in reality “wide-ranging.” In applying the logic of *Hodge*, the team of FBI investigators' questions were not appropriately tailored to the information they possessed. As such, the court gravely errs in permitting the admission of the statements aboard the aircraft.

The majority additionally blunders in determining the facts to be especially similar to those in *Spoerke*. There is in actuality a significant distinction that directly impact the admissibility of al-Hazimi's statements to FBI investigators. The court dismissed the petitioner's argument that the whole

of the FBI investigators' inquiries were not truly "designed to discern the threat the bombs presented" to the public, given the lengthy period of time that had passed since the original attack. *Spoerke*, 568 F.3d at 1249. The majority reaches this conclusion after being persuaded that the team's questions were aimed to discover whether or not al-Hazimi had knowledge of other explosives that posed significant threats to the public.

However, the actual inquiries at hand and in *Spoerke* are significantly different. In *Spoerke*, the officer physically saw "two duct-taped balls with a green string attached, which he suspected to be improved explosive devices." *Id.* at 1241. After noticing these items, Officer Haugh asked what they were. *Spoerke* replied "that they were "pipe bombs" that they "liked to throw...in canals and watch explode." *Id.* This confirmation led the officer to further inquire about the materials used to build these explosive devices. *Id.* These questions were specific and explicit in their aim to "discern the threat the bombs presented." *Id.* at 1249. While we do not have a direct transcript of the 14-hour-long aerial interrogation, the lengthy duration indicates that it is not possible that every single one of the investigators' questions was specific and explicit in discerning the threat al-Hazimi posed to the public.

II.

Beyond the public safety exception, the majority additionally erroneously concluded that the South Sudanese inquiry of al-Hazimi did not constitute a "joint venture" between foreign interrogators and United States law enforcement officers. In describing the doctrine, the court fails to note the existence and significance of *United States v. Emery*, a similar case that established the existence of a joint venture. *United States v. Emery*, 591 F.2d 1266 (9th Cir. 1978).

In determining "substantial" participation, the Ninth Circuit points to the fact that associated Drug Enforcement Administration (D.E.A.) agents "alerted the Mexican police of the possible activity" and "supplied the pilot for the plane." *Id.* at 1268. With respect to the issue at hand, South Sudanese representatives alerted American officials of their findings, with the U.S. providing an

aircraft. The majority certainly cannot intend to suggest that requirements for “active” or “substantial” participation hinge on *which* country does *which* action. Rather, we should be focused on the fact that any action or coordination took place at all. In a broader sense, “the constitutional safeguards of *Miranda* should not be circumvented merely because the interrogation was conducted by foreign officials in a foreign country.” *Id.*

Today, the court extends the scope of the public safety exception far beyond recognition. For decades, the foundation on which the *Miranda* warnings stand has stated that in order “to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored.” *Miranda*, 384 U.S. at 467. In denying al-Hazimi’s request to suppress statements made to FBI officials without such warnings, these very grounds have been dismantled. Despite the court’s decision today, the privilege against self-incrimination “applies to all individuals,” even those accused of the most heinous and horrifying crimes, such as acts of terrorism. *Id.* at 472. For these reasons, I respectfully dissent.

Applicant Details

First Name	Madison
Last Name	Howell
Citizenship Status	U. S. Citizen
Email Address	madisondhowell@gmail.com
Address	<div> <div>Address</div> <div> <div>Street</div> <div>136 Varner Ln</div> <div>City</div> <div>Lexington</div> <div>State/Territory</div> <div>Virginia</div> <div>Zip</div> <div>24450</div> </div> </div>
Contact Phone Number	8658164004

Applicant Education

BA/BS From	University of the South
Date of BA/BS	May 2021
JD/LLB From	Washington and Lee University School of Law
	http://www.law.wlu.edu
Date of JD/LLB	May 14, 2024
Class Rank	Below 50%
Law Review/Journal	Yes
Journal(s)	German Law Journal (GLJ)
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Birkhoff, Neil
neil.birkhoff@wrvblaw.com

Parella, Kish
vinayagamoorthyk@wlu.edu
202-725-8049

Fraley, Jill
fraleyj@wlu.edu

Miller, Russell
millerra@wlu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

MADISON HOWELL

136 Varner Ln. Apt C, Lexington, VA 24450 | 865.816.4004 | howell.m24@law.wlu.edu

June 8, 2023

The Honorable Judge Jamar K. Walker,
United States District Court,
Eastern District of Virginia

Dear Judge Walker,

I am a rising third-year law student at Washington and Lee University School of Law, and I am writing to apply for the full-time clerk position at the District Court in the Eastern District of Virginia for the 2024-2025 term. I am interested in this office, because the focus would provide an ideal opportunity to gain experience in my legal interests and because I plan to practice in Virginia post-clerkship.

Through my academic and professional pursuits before and during law school, I have developed a solid foundation of research and writing skills that will allow me to make an immediate and positive contribution as a clerk. During my undergraduate experience, both in school and during internships, I completed many research projects and writings, which helped me gain efficient research capabilities, along with improving my analytical abilities. I am currently working on a research project with a faculty member about a legal comparison between Chief Justice Roberts and Justice B  ckenf  rde of the Federal Constitutional Court. In my first-year Legal Research and Writing courses, I received positive feedback for the efficient and analytic rigor of my research and concise writing style.

My summer experience working at the Washington and Lee Tax Clinic has helped me to refine my understanding of tax law, but also furthered my interest in litigation. I interacted regularly with attorneys, peers, and federal representatives from the IRS and VATAX and consistently managed a client list of over thirty people. I further refined my writing and research skills as I prepared for upcoming appeals hearings and tax court cases. For these appeals I often had to gather pertinent facts from clients, evaluate best options, prepare clients for the hearings process, and communicate with IRS officers. This experience taught me about strategic planning, factual and legal preparation, and interviewing clients, which I will be able to use productively during my fall internship. Additionally, my interactions with individuals and the tax court preparation, this experience furthered my interest in litigation.

During the last two semesters, I was a Labor and Employment intern at Melwood, a non-profit outside of D.C. I wrote multiple Charters for Board Committees, wrote employment contracts, and produced multiple memoranda about legal questions concerning business affiliations, union negotiations, and recent jurisprudential decisions. This experience further taught me about the intricacies of regulatory law, which I will be able to use during my internship. I am currently a summer associate at an ERISA litigation firm, which has taught me about administrative law, along with reaffirming my abilities in civil procedure in various courts. Furthermore, these experiences have also allowed me to better understand legislation, policy, and administrative law which I can also use to assist the Court.

I have enclosed a resume, writing sample, and transcript for your review. Washington & Lee will submit my recommendations under a separate cover. Please let me know if you need any additional information. Thank you for your time and consideration.

Sincerely,
Madison Howell

MADISON HOWELL

136 Varner Ln. Apt. C, Lexington, VA 24450 | 865.816.4004 | howell.m24@law.wlu.edu

EDUCATION

WASHINGTON AND LEE UNIVERSITY SCHOOL OF LAW, Lexington, VA

Expected May 2024

Candidate for Juris Doctor; GPA: 3.333

Journal: German Law Journal, Executive Board, Programs Editor and Lead Articles Editor
Activities: Health Law Association, President
Women's Law Student Organization, Member

THE UNIVERSITY OF THE SOUTH, Sewanee, TN

B.A., Political Science; Minors in Biology, Chemistry, and Classical Languages; GPA: 3.3

Honors: Eta Sigma Phi (national honors society for undergraduate classics students)
Order of the Gown (Sewanee honors society)
Activities: Tennessee Undergraduate Classics Research Conference, Presenter
The Sewanee Fund, Senior Leadership Board
Sewanee Admissions Office, Arcadian and Senior Interviewer

EXPERIENCE

ERIC BUCHANAN & ASSOCIATES, Chattanooga, TN

May 2023 – August 2023

Health and ERISA Intern

MELWOOD, Upper Marlboro, MD

September 2022 – April 2023

Labor and Employment Intern

- Assisted the Vice President and Corporate Counsel with legal correspondence and contract negotiations, including reviewing and editing contract agreements with consultants and third-party vendors, and drafting new Charters
- Prepared memos on legal issues for the Corporate Counsel and other high level legal counsel
- Supported the Vice President of Government and Public Relations in relation to legislation, litigation, and regulation
- Evaluated government contracts for compliance with local, state, and federal laws

WASHINGTON & LEE TAX CLINIC, Lexington, VA

May 2022 – August 2022

Tax Intern

- Supervised and researched federal and state tax disputes for over thirty clients
- Advocated for multiple clients in both appeals conferences and tax court cases
- Managed written and oral communications with clients and federal and state officials

U.S. HOUSE OF REPRESENTATIVES, Washington, DC

June 2021 – August 2021

Intern, Fourth District of Tennessee

- Assisted legislative staff by preparing memos for congressional briefings and by drafting proposed legislation
- Wrote formal responses to constituent inquiries on policy issues such as healthcare, immigration, and national security

CENTER FOR THE STUDY OF THE PRESIDENCY AND CONGRESS, Washington, DC

June 2019 – August 2019

Intern

- Contributed to the Center's weekly publications with informative and creative writings
- Edited papers from fellows that are published in the Presidential Studies Quarterly
- Spearheaded multiple independent research projects on healthcare and dispersion of misinformation
- Presented best-practice approaches to aid staff in planning the Presidential Fellows Conference

NATIONWIDE INSURANCE, Lenoir City, TN

July 2016 – July 2018

Customer Service Representative

- Assisted customers, provided administrative support, and reviewed customer policies to provide quotes and services
- Licensed producer for Property and Casualty insurance

Print Date: 06/04/2023

Page: 1 of 2

Student: Madison Dupree Howell

WASHINGTON AND LEE
UNIVERSITY

Lexington, Virginia 24450-2116



SSN: XXX-XX-8324

Entry Date: 08/30/2021

Date of Birth: 10/27/XXXX

Academic Level: Law

2021-2022 Law Fall

08/30/2021 - 12/18/2021

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 109	CIVIL PROCEDURE	B+	4.00	4.00	13.32	
LAW 140	CONTRACTS	B	4.00	4.00	12.00	
LAW 163	LEGAL RESEARCH	B	0.50	0.50	1.50	
LAW 165	LEGAL WRITING I	B	2.00	2.00	6.00	
LAW 190	TORTS	B+	4.00	4.00	13.32	

Term GPA: 3.182

Totals:

14.50

14.50

46.14

Cumulative GPA: 3.182

Totals:

14.50

14.50

46.14

2021-2022 Law Spring

01/10/2022 - 04/29/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 130	CONSTITUTIONAL LAW	B	4.00	4.00	12.00	
LAW 150	CRIMINAL LAW	B	3.00	3.00	9.00	
LAW 163	LEGAL RESEARCH	B	0.50	0.50	1.50	
LAW 166	LEGAL WRITING II	B-	2.00	2.00	5.34	
LAW 179	PROPERTY	A	4.00	4.00	16.00	
LAW 195	TRANSNATIONAL LAW	A-	3.00	3.00	11.01	

Term GPA: 3.324

Totals:

16.50

16.50

54.85

Cumulative GPA: 3.257

Totals:

31.00

31.00

100.99

2022-2023 Law Fall

08/29/2022 - 12/19/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 637	Comparative Constitutional Law Seminar	B+	2.00	2.00	6.66	
LAW 642	Law and Geography Seminar	A-	2.00	2.00	7.34	
LAW 685	Evidence	B+	3.00	3.00	9.99	
LAW 743	Healthcare Law	A-	3.00	3.00	11.01	
LAW 793	Federal Income Tax of Individuals	B+	3.00	3.00	9.99	
LAW 865	Negotiations and Conflict Resolution Practicum	A-	2.00	2.00	7.34	
LAW 969	German Law Journal	CR	1.00	1.00	0.00	

Term GPA: 3.488

Totals:

16.00

16.00

52.33

Cumulative GPA: 3.333

Totals:

47.00

47.00

153.32

Print Date: 06/04/2023

Page: 2 of 2

Student: Madison Dupree Howell

Lexington, Virginia 24450-2116

WASHINGTON AND LEE
UNIVERSITY**2022-2023 Law Spring**

01/09/2023 - 04/28/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 690	Professional Responsibility	B	3.00	3.00	9.00	
LAW 716	Business Associations	A-	4.00	4.00	14.68	
LAW 727	International Business Transactions	B+	3.00	3.00	9.99	
LAW 821	Non-Profit Tax Planning & Representation Practicum	B+	3.00	3.00	9.99	
LAW 969	German Law Journal	CR	1.00	1.00	0.00	

Term GPA: 3.358**Totals:**

14.00

14.00

43.66

Cumulative GPA: 3.338**Totals:**

61.00

61.00

196.98

2023-2024 Law Fall

08/28/2023 - 12/18/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 707B	Skills Immersion: Business		2.00	0.00	0.00	
LAW 933	Working In Law Full-Time Externship		2.00	0.00	0.00	
LAW 933FP	Working In Law Full-Time: Field Placement		10.00	0.00	0.00	
LAW 969	German Law Journal		1.00	0.00	0.00	

Term GPA: 0.000**Totals:**

15.00

0.00

0.00

Cumulative GPA: 3.338**Totals:**

61.00

61.00

196.98

Law Totals

	Credit Att	Credit Earn	Cumulative GPA
Washington & Lee:	61.00	61.00	3.338
External:	0.00	0.00	
Overall:	61.00	61.00	3.338

Program: Law**End of Official Transcript**

WASHINGTON AND LEE UNIVERSITY TRANSCRIPT KEY

Founded in 1749 as Augusta Academy, the University has been named, successively, Liberty Hall (1776), Liberty Hall Academy (1782), Washington Academy (1796), Washington College (1813), and The Washington and Lee University (1871). W&L has enjoyed continual accreditation by or membership in the following since the indicated year: The Commission on Colleges of the Southern Association of Colleges and Schools (1895); the Association of American Law Schools (1920); the American Bar Association Council on Legal Education (1923); the Association to Advance Collegiate Schools of Business (1927); the American Chemical Society (1941); the Accrediting Council for Education in Journalism and Mass Communications (1948), and Teacher Education Accreditation Council (2012).

The **basic unit of credit** for the College, the Williams School of Commerce, Economics and Politics, and the School of Law is equivalent to a semester hour.

The **undergraduate calendar** consists of three terms. From 1970-2009: 12 weeks, 12 weeks, and 6 weeks of instructional time, plus exams, from September to June. From 2009 to present: 12 weeks, 12 weeks, and 4 weeks, September to May.

The **law school calendar** consists of two 14-week semesters beginning in August and ending in May.

Official transcripts, printed on blue and white safety paper and bearing the University seal and the University Registrar's signature, are sent directly to individuals, schools or organizations upon the written request of the student or alumnus/a. Those issued directly to the individual involved are stamped "Issued to Student" in red ink. ***In accordance with The Family Educational Rights and Privacy Act of 1974, as amended, the information in this transcript is released on the condition that you permit no third-party access to it without the written consent from the individual whose record it is. If you cannot comply, please return this record.***

Undergraduate

Degrees awarded: Bachelor of Arts in the College (BA); Bachelor of Arts in the Williams School of Commerce, Economics and Politics (BAC); Bachelor of Science (BS); Bachelor of Science with Special Attainments in Commerce (BSC); and Bachelor of Science with Special Attainments in Chemistry (BCH).

Grade	Points	Description
A+	4.00	} Superior.
A	4.00	
A-	3.67	
B+	3.33	} Good.
B	3.00	
B-	2.67	
C+	2.33	} Fair.
C	2.00	
C-	1.67	
D+	1.33	} Marginal.
D	1.00	
D-	0.67	
E	0.00	Conditional failure. Assigned when the student's class average is passing and the final examination grade is F. Equivalent to F in all calculations
F	0.00	Unconditional failure.

Grades not used in calculations:

I	-	Incomplete. Work of the course not completed or final examination deferred for causes beyond the reasonable control of the student.
P	-	Pass. Completion of course taken Pass/Fail with grade of D- or higher.
S, U	-	Satisfactory/Unsatisfactory.
WIP	-	Work-in-Progress.
W, WP, WF	-	Withdrew, Withdrew Passing, Withdrew Failing. Indicate the student's work up to the time the course was dropped or the student withdrew.

Grade prefixes:

R	Indicates an undergraduate course subsequently repeated at W&L (e.g. RC-).
E	Indicates removal of conditional failure (e.g. ED = D). The grade is used in term and cumulative calculations as defined above.

Ungraded credit:

Advanced Placement: includes Advanced Placement Program, International Baccalaureate and departmental advanced standing credits.

Transfer Credit: credit taken elsewhere while not a W&L student or during approved study off campus.

Cumulative Adjustments:

Partial degree credit: Through 2003, students with two or more entrance units in a language received reduced degree credit when enrolled in elementary sequences of that language.

Dean's List: Full-time students with a fall or winter term GPA of at least 3.400 and a cumulative GPA of at least 2.000 and no individual grade below C (2.0). Prior to Fall 1995, the term GPA standard was 3.000.

Honor Roll: Full-time students with a fall or winter term GPA of 3.750. Prior to Fall 1995, the term GPA standard was 3.500.

University Scholars: This special academic program (1985-2012) consisted of one required special seminar each in the humanities, natural sciences and social sciences; and a thesis. All courses and thesis work contributed fully to degree requirements.

Law

Degrees awarded: Juris Doctor (JD) and Master of Laws (LLM)

Numerical	Letter	Grade*	Grade**	Points	Description
4.0	A			4.00	
	A-			3.67	
3.5				3.50	
	B+			3.33	
3.0	B			3.00	
	B-			2.67	
2.5				2.50	
	C+			2.33	
2.0	C			2.00	
	C-			1.67	
1.5				1.50	This grade eliminated after Class of 1990.
	D+			1.33	
1.0	D			1.00	A grade of D or higher in each required course is necessary for graduation.
	D-			0.67	Receipt of D- or F in a required course mandates repeating the course.
0.5				0.50	This grade eliminated after the Class of 1990.
0.0	F			0.00	Receipt of D- or F in a required course mandates repeating the course.

Grades not used in calculations:

-	WIP	-	Work-in-progress. Two-semester course.
I	I	-	Incomplete.
CR	CR	-	Credit-only activity.
P	P	-	Pass. Completion of graded course taken Pass/Not Passing with grade of 2.0 or C or higher. Completion of Pass/Not Passing course or Honors/Pass/Not Passing course with passing grade.
-	H	-	Honors. Top 20% in Honors/Pass/Not Passing courses.
F	-	-	Fail. Given for grade below 2.0 in graded course taken Pass/Fail.
-	NP	-	Not Passing. Given for grade below C in graded course taken Pass/Not Passing. Given for non-passing grade in Pass/Not Passing course or Honors/Pass/Not Passing course.

* Numerical grades given in all courses until Spring 1997 and given in upperclass courses for the Classes of 1998 and 1999 during the 1997-98 academic year.

** Letter grades given to the Class of 2000 beginning Fall 1997 and for all courses beginning Fall 1998.

Cumulative Adjustments:

Law transfer credits - Student's grade-point average is adjusted to reflect prior work at another institution after completing the first year of study at W&L.

Course Numbering Update: Effective Fall 2022, the Law course numbering scheme went from 100-400 level to 500-800 level.

Office of the University Registrar
Washington and Lee University
Lexington, Virginia 24450-2116
phone: 540.458.8455
email: registrar@wlu.edu


University Registrar

WOODS ROGERS VANDEVENTER BLACK

ATTORNEYS AT LAW

NEIL V. BIRKHOFF
(540) 983-7699
birkhoff@woodsrogers.com

May 8, 2023

Clerkship Recommendation

Re: Madison Howell

To Whom It May Concern:

I was the Visiting Director of the Tax Clinic at the Washington & Lee School University of Law during the summer of 2022. Madison Howell was a student-attorney in the Tax Clinic during the summer of 2022. Madison was an outstanding advocate for the Clinic's clients.

The Tax Clinic requires student-attorneys to undertake representation of low-income taxpayers in federal and state income tax collection and controversy matters. Madison excelled in all facets of the Clinic work, from her research and written work product, to interactions with clients and representatives from the IRS and the Virginia Department of Taxation. She demonstrated the intellect to make insightful comments, the focus to complete assignments thoroughly, and the diligence to work through her cases in a timely and well-planned manner.

In sum, I would recommend Madison for a judicial clerkship. I have spent a good part of my 40 years in practice supervising law students and young attorneys, and it is with that experience that I strongly recommend Madison. I would be glad to speak with anyone who is interested, and can be contacted using the information above.

Very truly yours,

WOODS ROGERS VANDEVENTER BLACK PLC



Neil V. Birkhoff

NVB:hb

{3069129-1,900000-00149-01}

P.O. Box 14125, Roanoke, Virginia 24038-4125
10 S. Jefferson Street, Suite 1800, Roanoke VA 24011
P (540) 983-7600 • F Main (540) 983-7711 Direct (540) 492-4703

w r v b l a w . c o m

Roanoke | Lynchburg | Charlottesville | Richmond | Norfolk

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

June 08, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing this recommendation letter on behalf of Madison Howell, a student at Washington and Lee University School of Law (Class of 2024), who is applying for a judicial clerkship in your chambers.

Madison was enrolled in my upper year course on International Business Transactions. As part of the course, Madison drafted and negotiated both transaction term sheets and individual clauses for cross-border distribution agreements, licensing agreements, franchise agreements, and joint venture agreements. These exercises required a great deal of transactional research and team work. In addition, the course covered a range of topics related to international economic law, such as bilateral investment treaties, international investment arbitration, and human rights issues in supply chains.

I found that Madison was an extremely diligent student who is truly intellectually curious about the topics covered in the course. She demonstrated the ability to understand complex, even unfamiliar, concepts quickly and to pose insightful questions that demonstrated her mastery of the material and a genuine desire to learn. It was evident to me that she had a deep comprehension of the topics covered and was eager to probe the nuances.

I believe that Madison's dedication, intellectual curiosity, and interpersonal skills recommend her for a position in your chambers. Please feel free to contact me by email at parellak@wlu.edu should you have any questions regarding my recommendation.

Sincerely yours,

Kish Parella
Professor of Law

Kish Parella - vinayagamoorthyk@wlu.edu - 202-725-8049

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

June 08, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Madison Howell for a clerkship. I know Madison quite well. I taught her in my Property Law class last school year and have continued to work with her this year in my Law & Geography seminar, which essentially functions as an advanced legal writing course. In this course students draft short amicus briefs in two pending U.S. Supreme Court cases. As a result, I know Madison's writing and her research abilities well. She is an excellent student. I am delighted to recommend her.

In my seminar, Madison has completed briefs on complex topics. Her briefs are well written and, more importantly, she has the patience to do not only line edits of her work, but also developmental edits of her arguments and those of her classmates. Overall, Madison is both smart and hardworking, and I see her as thriving in a demanding work environment.

Madison has substantial work experience, which shows in her interactions with professors and classmates. She speaks thoughtfully and with maturity. She works well with others, including in sensitive situations, such as giving feedback on others work in a workshop. She has a calm, friendly personality that makes her easy to work with. In short, I believe she has a variety of skills and experiences that will allow her to thrive and to provide substantial value to chambers.

Best Regards,

Jill M. Fraley
Professor of Law

Jill Fraley - fraleyj@wlu.edu

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

June 13, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to write at this time to offer the strongest and most enthusiastic possible support for Madison Howell's application for a clerkship in your chambers. Madison is a truly impressive student and young professional.

I offer my unqualified support of Madison on the basis of several distinct experiences.

First, I had the good fortune of having Madison in my Comparative Law Seminar. She distinguished herself in the seminar with her exceptional energy and engagement. It was a large group and, despite my efforts, it was often hard to draw all the students into seminar-style discussions. Madison regularly volunteered with comments and insights. And she often drew classmates into the conversation with her. This was even more impressive because the Seminar's subject matter – Comparative Law – requires students to grapple with unfamiliar (literally foreign) material. This involves creative and critical thinking as well as a willingness to attempt to understand differences. Throughout the semester Madison showed curiosity and courage as she confronted the foreign law we were studying. She also made efforts to think beyond her first, instinctive reaction to a foreign norm or legal institution, seeking an explanation for the differences it showed to American law. All of this is especially praiseworthy because the Seminar placed larger than usual demands on Madison's ability to grasp legal theory and to make effective use of knowledge from other disciplines, such as political science and history. The fluency with which Madison accomplished this suggests an extraordinary mind and talent. In the end, Madison was one of the best students I've ever worked with in the classroom.

Second, the grade Madison earned in the Seminar was the result of her research paper exploring the jurisprudential biographies of U.S. Supreme Court Chief Justice John Roberts and former German Constitutional Court Justice Ernst-Wolfgang Böckenförde. Both jurists are convinced and committed Catholics. Madison used her paper to explore the linkages between their theology and jurisprudence. It was one of the smartest and most sophisticated Seminar projects I've had from a student. It required Madison to carefully map the two justices' biographies, opinions, and scholarly contributions. In the case of the German justice, this involved challenging research in the German language, often using online translation tools to find resources and to access the content of texts. In addition, the project required Madison to survey schools of Catholic thought and to consider how those themes related to the justices' work. The paper Madison submitted was well structured, appropriately resourced, and beautifully written.

Still, the ambitious scale of the project made it difficult to tie together in the span of a single semester's thirteen weeks. To Madison's immense credit, she approached me after the semester ended and asked if she could continue to work with me on the project – to fill in gaps in her research, to deepen other research efforts, and to submit a few additional drafts for feedback and revision. No student has done this before. It represented an impressive commitment to producing excellent work and a rare willingness to seek-out constructive criticism in order to improve as a researcher and writer. Madison has done impressive additional work on the project and she and I are now aiming at a revision that she will submit to specialty journals in comparative law or concerned with law and religion. I hope the paper will find a publisher. I can't emphasize this enough. Madison is a fine researcher and writer. But she has shown unparalleled determination to improve and succeed with those skills.

Third, Madison's exceptional service to the German Law Journal as a student editor provides another basis for my strong support for her application for a clerkship. I am aware of her work in this role because I am the Journal's Co-Editor-in-Chief and I supervise the student editors associated with the project. Madison was selected to serve as a student editor for this widely respected, peer-reviewed journal after a competitive process. She has brilliantly performed a wide range of demanding administrative and editorial duties, including review of submissions for language, substance and style, all under the pressure of the German Law Journal's break-neck publication schedule. Throughout her work for the Journal, Madison has exhibited the maturity, responsibility and initiative of a seasoned and reliable professional. Now, Madison has been elected by her peers on the Journal to lead the organization of a symposium next year. I can't think of a student who is better suited to the intellectual and organizational demands of that effort. On the basis of her work for the Journal, I would not hesitate to entrust Madison with any task, no matter how complex or sensitive.

Finally, Madison is rare among students today in that she frequently visits with his professors to simply talk about her coursework and her life in the law. In this more casual setting I have had the chance to get to know a little about Madison's character and personality. Madison combines an impressive intellect with extraordinary emotional intelligence and curiosity. She has a quick and gracious sense of humor. She will enrich and enliven your chambers.

It is on the basis of this broad evaluation of Madison's admirable qualities and qualifications that I enthusiastically recommend her as an extraordinary young lawyer and person. You will, no doubt, have applications from scores of excellent applicants. But I doubt you will find a peer for Madison.

Russell Miller - millerra@wlu.edu

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Russell Miller
J.B. Stombock Professor of Law

Russell Miller - millerra@wlu.edu

**MADISON
HOWELL**

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**Writing
Sample**

The attached writing sample is a closed memo I prepared in October 2021 for my legal writing class, which focused on a hypothetical lawsuit from a potential client. The memo was in response to a client inquiring whether she would likely succeed on an unlawful termination claim under New Jersey Law Against Unlawful Discrimination against her former employer based on the requirements outlined in N.J. Stat. Ann. § 10:5-12(a) (West 2021).

FROM: Madison Howell

DATE: October 15, 2021

RE: Katherine Lomasz—Discrimination Claim Against Former Employer

I. Question Presented

Under the New Jersey Law Against Unlawful Discrimination, does Katherine Lomasz satisfy the four elements to establish a prima facie case for unlawful termination when she (1) is a lesbian (2) was performing her job (3) was terminated, and (4) was replaced?

II. Brief Answer

A court is likely to find that Katherine Lomasz satisfies all four elements to establish a prima facie case for unlawful termination. Lomasz seeks damages for unlawful termination under the New Jersey Law Against Unlawful Discrimination. To establish a prima facie case for unlawful termination, Lomasz must satisfy four elements: (1) be part of a protected group, (2) establish that she was performing her job, (3) was terminated, and (4) was replaced. Lomasz satisfies all of the elements. First, Lomasz is part of a protected group because she identifies as a lesbian. She is open about her sexuality and is married to another woman. Second, Lomasz was performing her job at the time of termination. She had active clients and received multiple positive performance reviews. She was then terminated and was replaced by an individual that is not homosexual. Thus, Lomasz will likely succeed in establishing a prima facie case for unlawful termination.

III. Statement of Facts

Katherine Lomasz wants to sue The Norman Hotel in Cape May, New Jersey, for violation of the New Jersey Law Against Discrimination for terminating her employment based on her sexual orientation. Lomasz was terminated on May 1, 2018, after her marriage announcement on April 29, 2018. Prior to her termination, she had been a special events

coordinator for the hotel for two years. According to the termination letter, she was let go because of her choice to “openly flaunt [her] relationship and [her] ‘marriage’ in the newspaper” and that her “continuous presence here as our special event coordinator would attract business that [the hotel did] not desire,” since the owners do not agree with same-sex marriage. Lomasz identifies as homosexual and is open about her sexuality. According to her statement, her relationship was well known throughout the town. She is also married to a woman and posted a public newspaper announcement about the marriage, which is the subject of the termination letter that she received.

Prior to being hired at The Norman Hotel, Lomasz graduated from Rutgers with a degree in marketing. She worked as an event planner for four years before being hired at The Norman Hotel. Up until the termination, Lomasz stated that she received only good performance evaluations, with the owners stating that she had “been an excellent employee” and receiving two raises during her tenure.

After her termination, Lomasz claims her duties were transferred to a straight employee and that a straight woman was eventually hired to fill her role. Lomasz claims she was unlawfully terminated based on her sexual orientation. Because of this, Lomasz is seeking to bring a case for unlawful termination against The Norman Hotel.

IV. Discussion

The New Jersey Law Against Discrimination prevents wrongful termination of employees based on factors other than job performance, such as sexual orientation. *See* N.J. Stat. Ann. § 10:5-12(a) (West 2021). To establish a prima facie case under the New Jersey Law Against Discrimination, an employee must show that (1) they are a member of a protected group, (2) were performing their job “at a level that met [the] employer’s legitimate expectations,” (3) were terminated, and (4) the employer sought a replacement to perform the same work. *Zive v. Stanley Roberts, Inc.*, 867 A.2d 1135, 1141 (N.J. 2005). Lomasz likely

satisfies all four elements and therefore can likely establish a *prima facie* case for unlawful termination against The Norman Hotel.

A. Part of a Protected Group

The New Jersey Law Against Discrimination includes sexual orientation as one of the protected groups used to satisfy element one of a *prima facie* case for unlawful termination. *See* N.J. Stat. Ann. § 10:5-12(a) (West 2021). Sexual orientation can be described as “homosexuality . . . by inclination, practice, identity, or expression, having a history thereof of being perceived, presumed, or identified by others as having such an orientation.” *Id.* § 10:5-12(hh). Accordingly, to satisfy the first element a *prima facie* case of unlawful termination in New Jersey, an employee can identify as homosexual. *Id.* § 10:5-12(a).

Here, a court will likely find that Lomasz as a lesbian, is a member of a protected group and therefore will satisfy the first element for unlawful termination in New Jersey. *Id.* Lomasz identifies as homosexual and, as she states, was completely open with the whole town about her sexuality. Lomasz is also married to a woman and posted a public announcement in the town paper about the wedding. Lomasz identifying as a homosexual herself, while being identified by others as a homosexual, qualifies her to be a part of the sexual orientation protected group according to New Jersey Law. *Id.* § 10:5-12(hh). Therefore, Lomasz satisfies the first element of establishing a *prima facie* case for unlawful termination since she is a member of a protected group. *Id.* § 10:5-12(a).

B. Performing Job

An employee must perform up to their employers’ expectations to satisfy the second element of a *prima facie* case for unlawful termination by “performing the job prior to termination.” *Zive v. Stanley Roberts, Inc.*, 867 A.2d 1135, 1141 (N.J. 2005). In *Zive*, the employee worked for eight years in management and administration before termination. *Id.* at 1137. He was doing his job at the time of termination. *Id.* The New Jersey Supreme Court found that this was sufficient to meet the second element. *Id.* at 1135. Even though the

employee failed to meet the employer's sales goals, the court determined that simply performing the job was enough to show that the employee was meeting his employer's expectations. *Id.* at 1136. The court held that objectively performing a job satisfied this element, instead of the subjective employer's expectation standards. *Id.* at 1135. Thus, an employee only needs to show evidence that they were performing the job before termination, regardless of the employer's actual expectations. *See id.*

Here, a court would likely find that our client, Lomasz, satisfied the objective job performance standard and thus satisfied the second element. Lomasz was employed at The Norman Hotel for two years, and she received two raises during her employment. Like *Zive*, Lomasz was employed for multiple years and was actively performing the job at the time of termination. *See id.* at 1136–37. These facts are enough under *Zive* to satisfy the second element for unlawful termination. *See id.* at 1135. But in fact, Lomasz actually *exceeded* the standard set forth in *Zive*, as she received two raises and positive performance reviews. Even though positive performance evaluations or additional performance information are not required to show adequate job performance, the multiple raises, and positive performance reviews only strengthen Lomasz's claim that she was performing her job. As such, Lomasz meets the qualifications of job performance established in *Zive* with substantially more evidence than required and therefore will likely satisfy the second element for a prima facie case of unlawful termination. *See id.*

C. Terminated

The courts allow employees to satisfy the third element of a prima facie case for unlawful termination by simply showing the fact of termination. *See Zive*, 867 A.2d at 1136. For example, an employee can show termination via a phone call or a letter. *See id.* at 1136 (phone call); *Williams v. Pemberton Twp. Pub. Schs.*, 733 A.2d 571, 575 (N.J. Super. Ct.

App. Div. 1999) (letter). Lomasz received a termination letter, which is sufficient to satisfy this element. *See Zive*, 867 A.2d at 1136.

D. Replaced

To satisfy the fourth and final element an unlawful discrimination claim, an employee can either show that they were replaced by a person outside of their protected class or if they were not replaced by a person outside of their protected class, that other available evidence that suggests unlawful discrimination. *See Williams*, 733 A.2d at 578.

For example in *Williams*, an African-American female employee at a public school was terminated and replaced by another African-American woman. *Id.* at 493. The former employee then sued for discrimination based on race. *Id.* She cited a document that called her “unteachable” as racially discriminatory evidence. *Id.* at 503. Since *Williams* was replaced by a member of her own protected class, the New Jersey Supreme Court held there must be additional evidence to suggest discriminatory termination under this element. *Id.* at 503. It reasoned that an employer terminating her due to her being “unteachable” was not racial, so there was no evidence to suggest a link between her termination and racial discrimination. *Id.* Therefore, *Williams* failed to provide evidence linking the termination to discrimination in order to satisfy this element. *See id.*

Unlike in *Williams*, a court would likely find that Lomasz satisfies the fourth element of a prima facie case for unlawful termination because she was replaced by a straight employee, which is outside her protected group. *See Id.* Lomasz identifies as a homosexual. After she was terminated, Lomasz believes her workload was originally given to a heterosexual employee. Then, a new employee was hired to fill the position that was also straight.

Unlike in *Williams*, Lomasz was replaced by a member outside of her protected group, so no supplement evidence is needed to provide a link between her termination and unlawful discrimination. *See Id.* However, the termination letter specifically states that she was fired

because of her open homosexual identity, which creates a direct connection between her termination and discrimination. Furthermore, Lomasz, unlike *Williams*, has documented evidence that directly connects her termination to discrimination. Thus, Lomasz satisfies the requirement of replacement by an employee outside of her protected group, along with citing additional information that links her termination to discrimination. Therefore, Lomasz will almost certainly satisfy the fourth element of a prima facie case for unlawful termination. *See id.*

V. Conclusion

A court would likely find that Lomasz's termination case satisfies all elements to establish a prima facie case against The Norman Hotel in Cape May.

Applicant Details

First Name **Justine**
Last Name **Huang**
Citizenship Status **U. S. Citizen**
Email Address justine.huang.2024@lawmail.usc.edu
Address

Address
Street 15210 Cambridge St
City Tustin
State/Territory California
Zip 92782
Country United States

Contact Phone Number **9494418804**

Applicant Education

BA/BS From **Wellesley College**
Date of BA/BS **May 2019**
JD/LLB From **University of Southern California Law School**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=90513&yr=2009
Date of JD/LLB **May 12, 2024**
Class Rank **Not yet ranked**
Law Review/Journal **Yes**
Journal(s) **Southern California Law Review**
Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Professional Organization

Organizations **Just the Beginning Organization**

Recommenders

Klerman, Lisa
lklerman@law.usc.edu

Craig, Robin
rcraig@law.usc.edu
(213) 821-8153

Clifton, Richard
Judge_Clifton@ca9.uscourts.gov
808-522-7474

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

JUSTINE HUANG

1180 W. 29th St., Apt 102 • Los Angeles, CA 90007 • (949) 441-8804 • justine.huang.2024@lawmail.usc.edu

June 22, 2023

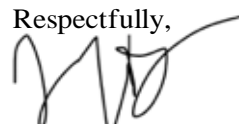
The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year law student at the University of Southern California Gould School of Law (USC) seeking a clerkship position in your chambers for the 2024 term. I learned about this opportunity through the Just the Beginning Organization, and my externship in the Ninth Circuit Court of Appeals last summer confirmed my interest in a judicial clerkship. I am particularly interested in clerking at the federal district court and was drawn to the opportunity to learn from your experiences as a judge as well as your prior experiences in public service.

My experiences externing for Judge Richard Clifton, where I drafted three bench memos and memorandum dispositions, and writing my Note, which has been selected for publication in the *Southern California Law Review*, have honed my legal research, writing, and analytical skills. In my legal writing course, I received a perfect score on an objective memorandum assignment and a top score in oral arguments. This summer I am a law clerk at the U.S. Department of Justice Environmental Enforcement Section and look forward to further developing my legal research and writing skills related to litigation. As I plan to pursue public interest environmental law, I would be especially interested in any environmental law cases in your docket. In addition, as part of the USC Gould Mediation Clinic, where I mediated various small claims cases around Los Angeles County, my conflict resolution skills and ability to see both sides of an issue will translate well into my ability to objectively analyze legal issues as a law clerk.

My resume, unofficial transcript, writing sample, and three letters of recommendation are submitted with this application. I would welcome the opportunity to meet with you at your convenience. Thank you for your time and consideration—it would be an incredible honor to support your important work.

Respectfully,

Justine Huang

JUSTINE HUANG

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EDUCATION

University of Southern California Gould School of Law

Juris Doctor Candidate, May 2024, Cumulative GPA: 3.59; GPA: 3.73 (second year)

Awards: 2023 Chao-Fujioka Family Scholarship for Public Law/Government Service
Activities: Senior Editor, Southern California Law Review
 Note selected for publication in the *Southern California Law Review*, titled
 “Shelby County to Clean Air Act: Evaluating the Constitutionality of California’s
 Clean Air Act Waiver Under the Equal Sovereignty Doctrine”
 President, Energy & Environmental Law Society
 Communications Chair, Public Interest Law Foundation
High Honors Grades: Legal Research, Writing and Advocacy; Environmental Law; Torts
Honors Grades: Admin Law; Civil Procedure; Con Law: Structure; Business Organizations; Evidence

Wellesley College

Bachelor of Arts, *cum laude*, Economics, May 2019, GPA 3.64

Honors: Barbara Barnes Hauptfuhrer ‘49 Scholar Athlete Award
Activities: Co-Captain, Varsity Tennis; Piano Recital, Music Performance Program
Study Abroad: St. Catherine’s College, University of Oxford

LEGAL EXPERIENCE

California Office of Attorney General

Extern, Natural Resources Law Section

Los Angeles, CA
 Commencing August 2023

U.S. Department of Justice, Environment and Natural Resources Division

Law Clerk, Environmental Enforcement Section

Washington D.C.
 Commencing May 2023

USC Gould Mediation Clinic

Volunteer Mediator

Los Angeles, CA
 September 2022 – May 2024

Mediate small claims cases in Los Angeles County Superior Court on a weekly basis. Use conflict resolution techniques to resolve disputes involving landlord/tenant, contract, and consumer/merchant matters.

U.S. Court of Appeals for the Ninth Circuit

Judicial Extern to the Honorable Richard R. Clifton

Honolulu, HI
 June 2022 – July 2022

Conducted legal research and drafted bench memoranda, memorandum dispositions, and comment memoranda in a variety of appellate cases involving immigration, criminal, disability, and environmental law.

OTHER EXPERIENCE

Law School Toolbox, LLC

Content Writer

Remote
 September 2021 – Present

Draft monthly blog content on various topics that aims to demystify the law school experience and help students succeed in law school, published on The Law School Toolbox and The Girl’s Guide to Law School sites.

Industrial Economics, Inc.

Senior Research Analyst

Research Analyst

Cambridge, MA
 December 2020 – July 2021
 August 2019 – November 2020

Supported environmental enforcement work for attorneys at the U.S. EPA. Researched and drafted memoranda, conducted responsible party searches for leaked underground storage tanks (USTs), and investigated a scrap metal recycling company with prior Clean Air Act violations which contributed to the EPA’s \$500,000 [settlement](#).

SKILLS: Mandarin (conversational proficiency), Spanish (reading and writing proficiency), Microsoft Excel (advanced)

INTERESTS: Tennis, classical piano, blogging, hiking, traveling, national parks

On-line Academic Student Information System



ID#: 9396896334

OASIS

Unofficial Transcript



Last Name **First Name**
 Huang Justine

Unofficial Transcript

Current Degree Objective

	Degree Name	Degree Title
MAJOR	Juris Doctor	Law

Cumulative GPA through 20231

	Uatt	Uern	Uavl	Gpts	GPAU	GPA
UGrad	0.0	0.0	0.0	0.00	0.0	0.00
Grad	0.0	0.0	0.0	0.00	0.0	0.00
Law	60.0	59.0	59.0	187.00	52.0	3.59
Other	0.0	0.0	0.0	0.00	0.0	0.00

Fall Term 2021

Course	Units Earned	Grade	Course Description
LAW-515	3.0	3.9	Legal Research, Writing, and Advocacy I
LAW-509	4.0	3.9	Torts I
LAW-503	4.0	3.1	Contracts
LAW-502	4.0	3.8	Procedure I

Spring Term 2022

Course	Units Earned	Grade	Course Description
LAW-531	3.0	3.3	Ethical Issues for Nonprofit, Government and Criminal Lawyer
LAW-516	2.0	3.7	Legal Research, Writing, and Advocacy II
LAW-504	3.0	3.1	Criminal Law
LAW-508	3.0	3.5	Constitutional Law: Structure
LAW-507	4.0	3.2	Property

Fall Term 2022

Course	Units Earned	Grade	Course Description
LAW-768	2.0	CR	Law Review Writing
LAW-767A	0.0	IP	Law Review Staff
LAW-608	4.0	3.7	Evidence
LAW-603	4.0	3.7	Business Organizations
LAW-630	4.0	CR	Mediation Clinic I

Spring Term 2023

Course	Units Earned	Grade	Course Description
LAW-767B	1.0	CR	Law Review Staff
LAW-789	3.0	3.4	Race, Racism and the Law
LAW-777	4.0	3.8	Administrative Law and Regulatory Policy
LAW-655	3.0	4.0	Environmental Law
LAW-631	4.0	3.8	Mediation Clinic II

June 22, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to provide an enthusiastic recommendation for Justine Huang, who is applying for a clerkship in your chambers. Justine is an exceptional candidate. After being selected for admission into the highly competitive Clinic, she went on to excel in every aspect of her work. The Clinic is a “working” class that operates essentially as a mediation firm. For that reason, I am uniquely positioned to evaluate students as if they were attorney colleagues.

As part of their work in the Clinic, the students mediate actual disputes between parties, helping them to analyze their claims and find creative solutions in order to avoid lawsuits. Successful student mediators – such as Justine -- are eligible to matriculate to the Advanced Mediation Clinic in their third year of law school, where they officiate over increasingly sophisticated mediations, often where the parties are represented by counsel.

One of the reasons behind Justine’s success in the Clinic is her ability to quickly grasp previously unfamiliar subjects and topics and to talk cogently and persuasively when discussing options for the mediation participants. She is thoughtful, analytical, and adaptable. She also brings a congenial attitude and dedication to her work, including when confronting difficult and contentious litigants. Ever the consummate professional, Justine is able to handle emotional parties and guide participants to a settlement outcome that appeals to both sides. She is sensitive to cultural differences, and deals with challenges appropriately and professionally.

Her personality traits make her an ideal colleague in the workplace as well as in the classroom. She is easy to get along with, and everyone in the clinic class enjoyed working with her.

As a former federal law clerk myself nearly three decades ago, I know how important it is to have someone in the role who is conscientious and committed. No matter what she is taking on, Justine can always be counted upon to be punctual, prepared, and diligent. Equally important is her talent as a writer, which is a critical skill for a law clerk.

If you have any questions about Justine, please do not hesitate to contact me. Please feel free to call me on my cell phone – (310) 386-9612 – or my home phone – (310) 544-6773.

Sincerely,

Lisa Klerman

Clinical Professor of Law
Director of the Mediation Clinic
USC Gould School of Law

Lisa Klerman - lklerman@law.usc.edu

June 22, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my great pleasure to recommend Justine Huang for a judicial clerkship in your chambers, to begin in late summer or fall 2024. Ms. Huang is a second-year student here at the University of Southern California (USC) Gould School of Law, and I have known her since she joined my "Biodiversity and the Law" reading group in the summer before her 1L year. Since that initial interaction, Ms. Huang has been a student in my Spring 2023 Environmental Law course; I supervised her student note for the Southern California Law Review; I have worked with Ms. Huang during her tenure as President of the Energy & Environmental Law Society, for which I am the Faculty Advisor; and I have acted as a regular advisor and sounding board for Ms. Huang as she pursues her legal goals.

Ms. Huang is a mature and energetic writer and researcher. For example, she received a "High Honors" grade in Legal Research, Writing, and Advocacy as a 1L, meaning that her abilities were at the very top (usually top student) in that class. More recently, her law review note, "Shelby County to Clean Air Act: Evaluating the Constitutionality of California's Clean Air Act Waiver Under the Equal Sovereignty Doctrine," explored two complicated areas of law: California's exceptionalism under the federal Clean Air Act (the statute I personally consider, by far, to be the most complex in environmental law); and the barely-developed Equal Sovereignty Doctrine that the U.S. Supreme Court most prominently used to invalidate portions of the Voting Rights Act in its Shelby County decision. With, frankly, relatively little help from me, Ms. Huang carefully articulated the Equal Sovereignty Doctrine test and applied it to California's ability to seek a waiver from the Clean Air Act's normal emissions standards for new motor vehicles and trucks. California has been using this waiver provision since the early 1970s, first to deal with pervasive smog problems but more recently to impose greenhouse gas emissions limitations and requirements for zero-emissions vehicles. These most recent uses have led to litigation challenging the continuing constitutionality of the waiver provision on grounds that California is the only state afforded that privilege. Ms. Huang not only clearly articulated and applied the federal law test, she also researched and expertly summarized 50 years of California's use of the waiver provision. Her note was appropriately long, but also clear and comprehensible. I was pleased but not surprised when it was selected for publication in the Southern California Law Review. The final version is due in a few weeks (June 2023), so I hope it will be in print by the time she graduates in May 2024.

Ms. Huang's research and writing skills were also at work in my Environmental Law class, where she earned a solid 4.0 "A" grade. Environmental Law is an intense statutory course, akin to Income Tax—although arguably harder because we covered four federal pollution control statutes, requiring students to master four very different statutory and regulatory regimes. Students also learn a good deal of statutory interpretation and administrative law in my class. As part of their preparation for real-world environmental law, I give them two take-home exams and several written assignments over the course of the semester. The assignments require students to use the U.S. Environmental Protection Agency's various databases, such as EJ (Environmental Justice) Mapper, to explore places that are important to them. The take-home exams pose real-world problems without clear answers that students must analyze in 12- and 15-page memoranda. Ms. Huang tackled all of these with thoughtful and thorough analyses, never missing a deadline and keeping up high scores throughout the semester.

Thus, I have seen firsthand Ms. Huang's excellent skills in legal research, analysis, and writing. Moreover, those skills have been recognized by others. For this summer (2023), Ms. Huang accepted a highly prestigious law clerk position in Washington, D.C., with the U.S. Department of Justice in their Environmental and Natural Resources Division. More impressively, however, she was also offered positions with the California Office of Attorney General and the Natural Resources Defense Council. True to her desire to acquire as much experience as possible, Ms. Huang will be externing with the California Office of Attorney General in Fall 2024 and hopes to extern with the Natural Resources Defense Council in Spring 2024.

While environmental and natural resources law is clearly one of Ms. Huang's strong interests, she has also wanted to pursue a judicial clerkship since her first year of law school. That goal is one reason she worked in the summer after her 1L year as a judicial extern for the Honorable Richard R. Clifton at the U.S. Court of Appeals for the Ninth Circuit. There she gained experience drafting bench memoranda and memorandum dispositions in a variety of federal law cases, including criminal law cases and immigration, disability, and environmental law civil cases. Notably, she has received Honors grades in Civil Procedure Constitutional Law, and Evidence (among other courses), indicating her affinity for court procedure.

Ms. Huang is also one of the most organized and productive law students I have ever met in my 25 years of law teaching. I first met Ms. Huang over Zoom in the summer of 2021, as the "Biodiversity of the Law" 1L Reading Group met electronically to informally discuss a variety of fun topics, from de-extincting woolly mammoths to CRISPR and climate change adaptation. When meetings moved in person during the fall, attendance tapered off—but not for Ms. Huang! She was one of five students (out of a starting group of 12) that not only continued to meet through October (when the reading group ended), but also helped to organize a reunion in April 2022 to celebrate the end of the students' first year.

This last year (2022-2023) was even more impressive. In addition to her normal course load, Ms. Huang was President of the Energy & Environmental Law Society, leading a seven-member Executive Board in organizing 11 events for law students,

Robin Craig - rcraig@law.usc.edu - (213) 821-8153

including the first-ever Gould-organized trip to the California Lawyers Association's Environmental Law@Yosemite Conference (where USC was the third-most represented law school); volunteering to mediate, on a weekly basis, small claims cases in the Los Angeles Superior Court through Gould's Mediation Clinic; writing a publishable law review note; serving as Senior Editor for the Southern California Law Review; drafting monthly blog posts for law students for The Law School Toolbox and The Girl's Guide to Law School; and serving as Communications Chair for the Public Interest Law Foundation.

Finally, Ms. Huang—Justine—is simply a wonderful person to work with. She has endless good humor to balance her drive to achieve and passion for excellence. She is an excellent listener and problem solver, traits that undoubtedly contribute to her success in the Mediation Clinic. She also lives a deep commitment to the public interest, seeking to increase Asian-American representation in environmental and natural resources law and to correct environmental (and other) injustices.

In short, I recommend Justine Huang without reservation for a judicial clerkship in your chambers. Please do not hesitate to contact me if I can be of further assistance.

Sincerely yours,

Robin Kundis Craig
Robert C. Packard Trustee Chair in Law
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Re: Letter of Recommendation for Justine Huang

I am pleased to offer a strong recommendation in support of the application of Justine Huang, who served as a judicial extern for me during summer 2022, after she finished her first year as a student at the University of Southern California Gould School of Law.

Justine was assigned primary responsibility within my office for five cases. I ask externs to do the same work that law clerks in my chambers do, albeit on cases that at first glance seem less complicated. For three of the cases, she prepared comprehensive bench memos that were circulated to all three judges on the panel. For those cases, after the panel agreed with the recommendations in her bench memo, she subsequently prepared draft dispositions. For the other two cases, she prepared shorter comment memos for me. For all of the cases she identified and assembled copies of specific parts of the record, statutes, cases, and other materials for my review and preparation. We also discussed the cases in preparation for oral argument and again after argument and the judges' conference.

Her work was of very high quality. I provide externs with detailed written comments on draft bench memos. The first paragraph of my comments on his first draft memo illustrate how exceptionally well I think she did: "Outstanding draft bench memo. I doubt that I have ever reviewed a draft bench memo for an extern's first case that was any better, and not often a draft by a law clerk for the clerk's first case. This may not have been the most challenging case in terms of the outcome – I've already vented my frustration about the poor quality of [plaintiffs'] briefs – but the context was not simple and involved an area of law I assume unfamiliar to you. The analysis is logical and persuasive. The memo is well organized and well written. This is a great work product." I then offered a few editorial or form comments, to which she responded well in a second draft.

Her later draft bench memos drew similar evaluations from me. In all three cases, I circulated the memos to the other judges in the form of slightly revised second drafts. In all three cases, the other judges agreed with the recommendations contained in Justine's memos, and the panel entered dispositions largely in the form she drafted and presented to me for circulation.

As I mentioned, the cases assigned to externs in my chambers are the ones that we think will turn out to be less challenging. That assessment was correct for the cases assigned to Justine. I regret that I do not have memory of the cases themselves sufficient to permit me to comment further on them. My experience may not permit me to say how she would do with the most complicated cases, but she had a

very positive attitude and strong work ethic, and she handled subjects previously unfamiliar to her very well, so I expect that she would do well with those tougher cases.

On a personal level, Justine was easy to work with, responded well to questions and suggestions, and got along well with others in chambers. I enjoyed working with her and think she has a bright future.

If there is further information I can provide or if there is anything you would like to discuss with me, please do not hesitate to contact me by phone (808-522-7474) or email (richard_clifton@ca9.uscourts.gov)

Very truly yours,

Richard R. Clifton
U.S. Circuit Judge

O:\Letters\Recommendations\Jacob Kamstra recommendation 2023-05-16.wpd

JUSTINE HUANG

1180 W. 29th St., Apt 102 • Los Angeles, CA 90007 • (949) 441-8804 • justine.huang.2024@lawmail.usc.eduWriting Sample

The below writing sample is an internal bench memorandum I drafted last summer (2022) during my judicial externship for Judge Richard Clifton in the Ninth Circuit Court of Appeals. The bench memorandum provides a recommendation on the case. This case entailed a native and citizen of Mexico who illegally entered the U.S. twice and was reinstated for removal. The asylum officer determined that Petitioner failed to establish a reasonable fear of persecution based on a protected ground or torture in Mexico. Petitioner then requested that an Immigration Judge (IJ) review this negative determination. At the beginning of the IJ hearing, Petitioner requested a continuance to obtain an attorney. The IJ denied his request as Petitioner had appeared with counsel at a bond hearing held earlier that day, and subsequently affirmed the asylum officer's negative reasonable fear determination. Petitioner appealed the IJ's decision.

I primarily drafted this memorandum, reviewed and lightly edited by a law clerk and Judge Clifton. The "Factual and Procedural History" has been omitted in this submission to reduce the sample's length. Since this sample contains confidential information, I have redacted the case name and replaced the Petitioner's name with "Petitioner" throughout, and obtained consent from Judge Clifton to use this memorandum as a writing sample.

BENCH MEMORANDUM

TO: Judge Clifton
FROM: Justine Huang, Law Extern
DATE: July 25, 2022
RE: *[Case Name Redacted]*
Appeal From: Immigration Judge
Jurisdiction (Appellate): 28 U.S.C. § 1252(a)(1)
Case Weight: 3
Notice of Appeal Filed: *[Date Redacted]* (timely)
Recommendation: Deny petition for review

OVERVIEW

Petitioner, a native and citizen of Mexico who illegally entered the United States twice and was reinstated for removal in 2019, petitions for review of the decision by the Immigration Judge (IJ) affirming the asylum officer's determination that Petitioner failed to establish a reasonable fear of persecution or torture.

Petitioner alleges that (1) the IJ denied him due process of law by denying his request for a continuance to obtain counsel at his reasonable fear review hearing, (2) he established a reasonable fear of torture under the Convention Against Torture (CAT) as he would be targeted and tortured upon removal by gang members for money, and (3) the IJ failed to make a reasoned statement for denying relief. I recommend that the panel deny Petitioner's petition for review.

QUESTIONS PRESENTED AND SHORT ANSWERS

I. Did the Immigration Judge (IJ) violate Petitioner's right to due process by denying him a continuance to obtain counsel? *[Pages 3-7]*

No. The IJ did not violate Petitioner's statutory right to counsel in his reasonable fear review proceeding because Petitioner was advised of his right to counsel, secured counsel for an earlier hearing the same day, was provided a reasonable opportunity to obtain counsel within the ten days allowed by 8 C.F.R. § 208.31(g), and failed to explain how a continuance would allow him to return with counsel within the ten-day period.

II. Does substantial evidence support the Immigration Judge's determination that Petitioner failed to establish a reasonable fear of torture? *[Pages 7-9]*

Yes. The IJ reasonably determined that Petitioner failed to establish a reasonable fear of torture because he was never physically harmed nor directly threatened in Mexico and based his fear on generalized violence and crime. Further, he has not shown any reason to believe that Mexican authorities would seek to torture him or acquiesce to his torture.

III. Did the Immigration Judge err by considering only past torture in the CAT analysis and/or by failing to provide a reasoned statement or analysis? *[Pages 9-10]*

No. The IJ provided a reasoned explanation in the record that did not solely consider past torture to be the basis for CAT relief and adequately explained why Petitioner failed to establish a reasonable fear of torture. Further, Petitioner failed to demonstrate sufficient evidence indicating the reasonable possibility of future torture and failed to explain what evidence the IJ failed to consider regarding the possibility of future torture.

STANDARDS OF REVIEW

The court reviews de novo whether the statutory right to counsel was violated. “Whether [an] IJ’s denial of a continuance violated [a petitioner’s] statutory right to counsel . . . is a question of law which we review de novo.” *Montes-Lopez v. Holder*, 694 F.3d 1085, 1088 (9th Cir. 2012).

The court reviews for substantial evidence the factual findings underlying the IJ’s determination that an applicant is not eligible for protection under the CAT. *Lalayan v. Garland*, 4 F.4th 822, 840 (9th Cir. 2021). Substantial evidence means that “we must uphold the IJ’s conclusion that [petitioner] did not establish a reasonable fear of torture unless, based on the evidence, any reasonable adjudicator would be compelled to conclude to the contrary.” *Bartolome v. Sessions*, 904 F.3d 803, 811 (9th Cir. 2018) (citations and quotation marks omitted).

DISCUSSION

I. Did the Immigration Judge violate Petitioner’s right to due process by denying him a continuance to obtain counsel?

Non-citizens have a constitutional and statutory right to counsel in removal proceedings. “Although there is no Sixth Amendment right to counsel in an immigration hearing, Congress has recognized it among the rights stemming from the Fifth Amendment guarantee of due process that adhere to individuals that are the subject of removal proceedings.” *Tawadrus v. Ashcroft*, 364 F.3d 1099, 1103 (9th Cir. 2004). However, making a Fifth Amendment claim to a right to counsel requires Petitioner to show that his proceeding before the IJ “was so

fundamentally unfair that [he] was prevented from reasonably presenting his case,” which would require him to demonstrate both procedural error and prejudice. *Ortiz v. INS*, 179 F.3d 1148, 1153 (9th Cir. 1999).

A. Statutory Right to Counsel and *Orozco-Lopez*

Petitioner primarily argues on appeal that the IJ’s denial of his request for a continuance to obtain an attorney at the reasonable fear hearing violated his statutory right to counsel under 8 U.S.C. § 1362. **OB 8; AR 6–7.** A non-citizen “denied the statutory right to be represented by counsel in an immigration proceeding need not also show that he was prejudiced by the absence of the attorney.” *Montes-Lopez v. Holder*, 694 F.3d at 1090–94.

Petitioner argues that non-citizens subject to expedited removal have a statutory right to counsel at their reasonable fear review hearings before an IJ, citing *Zuniga v. Barr*, 946 F.3d 464, 469 & n.8 (9th Cir. 2019). **OB 6–7.** However, *Orozco-Lopez*, 11 F.4th 764, 775 (9th Cir. 2021), notes that *Zuniga*’s holding is not so broad. In *Zuniga*, the question was whether “non-citizens *subject to expedited removal under 8 U.S.C. § 1228* have a statutory right to counsel in reasonable fear proceedings before immigration judges.” 946 F.3d at 465 (emphasis added). 8 U.S.C. § 1228 only governs the “[e]xpedited removal of aliens convicted of committing aggravated felonies.” 8 U.S.C. § 1228(B)(4)(B); *Orozco-Lopez*, 11 F.4th at 775. Nevertheless, “[t]he broader legislative context . . . supports the conclusion that there is a right to counsel in reasonable fear proceedings.” *Zuniga*, 946 F.3d at 469.

Orozco-Lopez clarifies that Petitioner has a statutory right to counsel. The right to counsel is codified at 8 U.S.C. § 1362, which provides that “[i]n any removal proceedings before an immigration judge,” non-citizens “shall have the privilege of being represented” by counsel of their choosing. 8 U.S.C. § 1362. *Orozco-Lopez* holds that under 8 U.S.C. § 1362, “any removal

proceedings” include reasonable fear hearings before an IJ. 11 F.4th at 777. Thus, non-citizens whose removal orders have been reinstated are statutorily entitled to counsel under 8 U.S.C. § 1362 at their reasonable fear hearings before an IJ. *Id.* at 780.

However, this statutory right to counsel is cabined by 8 C.F.R. § 208.31(g)’s requirement that in the absence of exceptional circumstances, the reasonable fear review hearing shall be conducted by the IJ within ten days of the filing of the Notice of Referral to the Immigration Judge. 8 C.F.R. § 208.31(g); *Orozco-Lopez*, 11 F.4th at 777. This does not require a non-citizen to have counsel before an IJ can proceed, but only that a non-citizen must be informed of the entitlement to counsel and have an opportunity to seek counsel within ten days of filing the Notice of Referral to Immigration Judge. *Orozco-Lopez*, 11 F.4th at 778–79.

B. Supplemental Briefing

Petitioner argues he was denied his statutory right to counsel when he was denied a continuance to retain counsel within the ten-day period set out in 8 C.F.R. § 208.31(g). **Pet’r SB 2.** He argues that the IJ should have continued the case for one day to allow him to obtain counsel within the constraints of 8 C.F.R. § 208.31(g). **Pet’r’s Resp. to Resp’t SB 2.**

A non-citizen may waive the right to counsel, but such waiver must be knowing and voluntary. *Tawadrus*, 364 F.3d at 1103. The IJ must “(1) inquire specifically as to whether petitioner wishes to continue without a lawyer; and (2) receive a knowing and voluntary affirmative response.” *Id.* (internal citations omitted).

Here, Petitioner may have given a knowing and voluntary waiver of his right to counsel. When the IJ inquired whether Petitioner wanted an attorney, Petitioner appeared to indicate in the affirmative but did not explain why he did not have counsel for this hearing. **AR 6–7.** After the IJ communicated that he needed to have obtained counsel ahead of time, Petitioner said

“Okay” and did not object, proceeding with the hearing. **AR 6–7**. Even if Petitioner did not give a knowing and voluntary waiver of his right to counsel, the IJ is not obligated to grant indefinite continuances if a non-citizen doesn’t produce counsel but refuses to waive his right. *Tawadrus*, 364 F.3d at 1103. When a petitioner does not waive the right to counsel, IJs “must provide [petitioner] with reasonable time to locate counsel and permit counsel to prepare for the hearing.” *Arrey v. Barr*, 916 F.3d 1149, 1158 (9th Cir. 2019) (quoting *Biwot v. Gonzales*, 403 F.3d 1094, 1098–99 (9th Cir. 2005)). What is considered a “reasonable time” depends on several factors, including “the realistic time necessary to obtain counsel; the time frame of the requests for counsel; the number of continuances; any barriers that frustrated a petitioner’s efforts to obtain counsel, such as being incarcerated or an inability to speak English; and whether the petitioner appears to be delaying in bad faith.” *Arrey*, 916 F.3d at 1158. A petitioner is not denied the right to counsel where continuing the hearing would be futile or where the IJ has done everything reasonably possible to permit the petitioner to obtain counsel. *Id.*

The IJ gave Petitioner reasonable time to locate counsel and Petitioner did not show good cause for a continuance. In *Orozco-Lopez*, the Ninth Circuit held that the statutory right to counsel was denied to one party (Orozco-Lopez) because the IJ did not mention the possibility of legal representation at the hearing, but not denied to the other party (Gonzalez) because “he had the opportunity to retain counsel and failed to do so, and his other challenges are without merit.” 11 F.4th at 779–80. Here, Petitioner’s case is distinguishable from *Orozco-Lopez*’s situation because the IJ directly asked him about having an attorney at the hearing. **AR 6**. Petitioner’s case is more similar to Gonzalez’s situation. While Petitioner was not granted any prior continuances and expressed a desire to be represented, he had retained an attorney earlier that day in the bond hearing, which showed he had a reasonable amount of time to communicate with his prior lawyer

or find a new lawyer. **AR 6–7.** He did not address the IJ’s direct questions or provide a basis for dissatisfaction with his bond hearing lawyer or other reason he was unable to obtain an attorney. **AR 6–7.** At the time of the hearing, he had been living in the U.S. for nine years, had been counseled before his interview with the asylum officer, and had at least a week to secure counsel for this hearing. **AR 23, 33, 34.** He did not indicate he was trying to find another attorney nor demonstrate diligent efforts to contact or secure an attorney. **AR 6–7.** He also failed to explain how he planned to obtain an attorney in one day, especially as the next day, January 1, was a holiday. **AR 6–7.** Petitioner is not detained or incarcerated, **OB 2,** and had a Spanish translator present during the hearing. **AR 5.** He was given a list of attorneys and notified about his right to counsel prior to the hearing. **AR 21, 23, 34;** *see United States v. Moriel-Luna*, 585 F.3d 1191, 1201–02 (9th Cir. 2009) (holding that the IJ reasonably concluded that one week was a reasonable amount of time for petitioner to find counsel because the IJ informed petitioner of his right to counsel, provided him with a list of legal-services organizations, and petitioner did not indicate he had tried to find an attorney). Thus, I recommend affirming that Petitioner’s statutory right to counsel was not violated when the IJ denied the continuance in his proceeding.

II. Does substantial evidence support the Immigration Judge’s determination that Petitioner failed to establish a reasonable fear of torture?

In order to remain eligible for withholding of removal, Petitioner must show a reasonable fear that he would either be 1) persecuted on account of a protected ground or 2) tortured with the acquiescence of a public official in Mexico. *See* 8 C.F.R. § 208.31(c); 8 C.F.R. § 1208.18(a)(1). Petitioner primarily argues on appeal that he has established a reasonable fear of torture; hence, I focus my analysis on the torture element. **OB 10–12.**

Article 3 of the CAT prohibits states from returning anyone to another country when there are “substantial grounds” for believing he or she may be tortured. *See* United Nations

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), G.A. Res. 39/46, U.N. Doc. A/39/51 (1984); Pub. L. 105-277 (1998). Torture can be inflicted “for any reason based on discrimination of any kind.” 8 C.F.R. § 1208.18(a)(1).

Protection under the CAT requires two elements: “first, is it more likely than not that the alien will be tortured upon return to his homeland; and second, is there sufficient state action involved in that torture.” *Benedicto v. Garland*, 12 F.4th 1049, 1063 (9th Cir. 2021) (citations and quotation marks omitted); *see* 8 C.F.R. § 1208.16(c)(2).

The first element requires that an applicant demonstrate “a chance greater than fifty percent that he will be tortured” if removed. *Hamoui v. Ashcroft*, 389 F.3d 821, 827 (9th Cir. 2004). Petitioner argues that he would be targeted and tortured by gangs if sent back to Mexico. **OB 12.** In 2010, Petitioner survived a potential mugging in Tijuana, Mexico and witnessed a shootout which led him to reenter the U.S. **AR 7–9.** He testified that he feared he would be kidnapped, extorted, or killed by gang members seeking money from newly deported immigrants. **AR 13, 41.** However, he did not know anyone specifically looking for him, instead basing his fear on what he had seen and heard in the news. **AR 41.** Petitioner was never harmed or directly threatened in Mexico. **AR 14, 37.** He testified only that his father had been extorted and on one occasion threatened, and the company president who extorted his father later ended up in prison. **AR 9, 11–14, 16, 38–43.** Generalized evidence of violence and crime in Mexico is not particular to Petitioner and does not satisfy the standard of proof. *See Delgado-Ortiz*, 600 F.3d 1148, 1152 (holding that general violence and crime in Mexico associated with drug trafficking and cartels is insufficient to establish that it is “more likely than not” petitioners would be tortured); *Ruiz-Colmenares v. Garland*, 25 F.4th 742, 751 (9th Cir. 2022) (denying petitioner’s CAT claim because petitioner’s past robberies over twenty years ago were instances

of general crime that do not amount to past torture). Thus, I conclude Petitioner failed to demonstrate it is “more likely than not” he will be subject to torture if removed.

The second element requires that the torture be “inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official acting in an official capacity or other person acting in an official capacity.” 8 C.F.R. § 1208.18(a)(1). “Acquiescence” by government officials requires “actual knowledge or willful blindness.” 8 C.F.R. § 1208.18(a)(7). Here, Petitioner did not show a reasonable fear that he would be tortured with the acquiescence of a public official in Mexico. Neither he nor his family have had any trouble with Mexican authorities other than witnessing their solicitation of bribes. **AR 16, 42.** He testified that he does not fear harm from Mexican public officials or anyone affiliated with the Mexican government and does not know whether such officials would protect him if they knew he were being harmed. **AR 15–16, 42.** He has not shown any reason to believe that Mexican authorities would seek to torture him or acquiesce to his torture. **AR 18.** Thus, I recommend affirming that substantial evidence supports the IJ’s determination that Petitioner failed to establish a reasonable fear of torture.

III. Did the Immigration Judge err by considering only past torture in the CAT analysis and/or by failing to provide a reasoned statement or analysis?

Petitioner argues on appeal that he established a successful case for protection under the CAT based on fear of future torture and the IJ misapplied the law by limiting consideration of Petitioner’s CAT application to only past torture, denying him due process of law. **OB 13–14.** Petitioner also alleges that the IJ failed to make a reasoned statement for denying relief. **OB 14.**

When evaluating an application for CAT relief, the IJ should consider “all evidence relevant to the possibility of future torture,” including evidence of past torture inflicted upon the applicant; evidence that the applicant could relocate to a part of the country of removal where he

or she is not likely to be tortured; evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and other relevant information regarding conditions in the country of removal. 8 C.F.R. § 1208.16(c)(3). “[T]he IJ must consider all relevant evidence; no one factor is determinative.” *Maldonado v. Lynch*, 786 F.3d 1155, 1164 (9th Cir. 2015). In addition, due process and precedent require a “minimum degree of clarity” in dispositive reasoning and in the treatment of a properly raised application for relief. *She v. Holder*, 629 F.3d 958, 963 (9th Cir. 2010).

Petitioner alleges that the IJ’s decision failed to properly evaluate his CAT claim. However, IJs presiding over reasonable fear hearings in reinstatement proceedings “do not have the ability nor are they required to provide detailed decisions outlining all the claims raised by the alien.” *Bartolome*, 904 F.3d at 813–14. Further, the IJ provided a more detailed explanation of her decision in the record, including that Petitioner “has not suffered harm rising to the level of persecution or torture. There is no reason to believe that the authorities are looking for [Petitioner] or interested in [him] in order to torture him or that they would turn a blind eye if someone else did.” **AR 18**. This adequately incorporated evidence relevant to the possibility of future torture and explained why Petitioner failed to establish a reasonable fear of torture. Petitioner failed to demonstrate that the record compels a finding of the reasonable possibility of future torture and failed to explain what evidence the IJ failed to consider that is relevant to the possibility of future torture. Thus, I recommend affirming that the IJ did not err in its CAT analysis nor fail to provide a reasoned statement and analysis.

CONCLUSION

For the foregoing reasons, I recommend that the panel deny Petitioner’s petition for review.

Applicant Details

First Name **Diego**
 Middle Initial **G**
 Last Name **Huerta**
 Citizenship Status **U. S. Citizen**
 Email Address dgh46@georgetown.edu

Address

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423 9th St. NE
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Zip
20002
Country
United States

Contact Phone Number **5206035707**

Applicant Education

BA/BS From **University of Arizona**
 Date of BA/BS **May 2021**
 JD/LLB From **Georgetown University Law Center**
https://www.nalplawschools.org/employer_profile?FormID=961
 Date of JD/LLB **June 5, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Georgetown Environmental Law Review**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

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**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Diego Huerta

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June 12, 2023

Honorable Judge Jamar Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

Thank you for the opportunity to apply for a clerkship in your chambers. I am applying to this position because I would like to contribute to the work you do and deepen my understanding of the federal courts. I believe that I am a good candidate for this position due to my strong academic background, diverse set of career experiences, and passion for justice.

During my time at the University of Arizona, I maintained perfect grades and studied environmental and natural resource law. I also worked in a variety of scientific fields and developed the critical thinking skills necessary to succeed as a scientist. In graduate school, I produced an extensive master's thesis, and developed community outreach materials explaining complex scientific findings to a lay audience.

In law school, I have engaged deeply with the theory and practice of law. I have taken and succeeded in many classes critical to the work courts do every day, such as constitutional law, administrative law, statutory interpretation, and evidence. I am also a member of the Georgetown Environmental Law Journal, which has significantly improved my writing skills and understanding of environmental issues.

During my time working at the EPA and the DOJ, I have learned a great deal about prosecuting and defending civil actions in the enforcement and rulemaking context, honed my attention to detail, and developed my legal reasoning skills. This experience is invaluable to my understanding of the courts and has led to a strong interest in how courts manage cases and reach their decisions.

Given my experience in both scientific and legal research and writing, as well as my performance in law school, I believe that I have a lot to contribute to this clerkship. Federal courts are important to me not just as forums for the practice of environmental law, but as guardians of civil order. I am excited for any opportunity to become more familiar with them.

Sincerely,
Diego Huerta

Diego Huerta

(520) 603-5707 | diegohuerta@email.arizona.edu

Education

Georgetown Law School

J.D. Law

GPA: 3.83

Washington, DC

Expected May 2024

University of Arizona

M.S. Environmental Science

GPA: 4.00

Tucson AZ

August 2021

Experience

U.S. DOJ, Environmental and Natural Resources Division

Law Clerk

Washington D.C.

Summer 2023

- Writing/reviewing court filings and legal research memos in cases defending environmental rulemakings and government facilities.
- Opportunities for trial preparation, Clean Water Act enforcement work, and deposition review.

U.S. EPA, Office of Civil Enforcement, Air Enforcement Division Washington, D.C.

Honors Law Clerk

Summer 2022 - Fall 2022

- Drafted motions, referrals, and legal/scientific research.
- Reviewed inspection materials and prepared inspection report material.
- Participated in EPA training and talks, observed meetings within EPA and settlement discussions with regulated entities.

Georgetown Environmental Law Journal

Staff/Executive Editor

Washington, D.C.

Sept 2022 - Present

- Reviewing and editing citations, proofing academic articles, and writing blog posts and student note.
- Will correspond directly with authors and manage staff in 2023-2024 school year

Integrated Environmental Science and Health Risk Lab

Undergraduate/Graduate Researcher

Tucson, AZ

January 2019 -May 2021

- Wrote undergraduate thesis on national, binational, and international legal

frameworks surrounding binational sewage spill.

- Wrote master's thesis containing risk assessment literature review
- Compared soil, water, plant, and settled dust metal(loid) concentrations with relevant CALEPA, FAO-WHO, USDA, HUD, and EPA primary and secondary contamination standards and screening levels.

Dr. Matthew Goode

Tucson, AZ

Undergraduate Researcher

May 2017 - September 2020

- Presented at local and national natural resource conferences.
- Contributed to writing of internal reports and prepared manuscript on rattlesnake activity modeling for publication.
- Wrote and edited student posts and information for the lab website.

The USA National Phenology Network

Tucson, AZ

UA NASA Space Grant Intern

October 2018 - May 2019

- Performed literature review, data collection and analysis, and modeling of invasive plant phenology in support of agency outreach and public facing data products.
- Contributed edits to staff publication and produced internal white paper reviewing invasive species phenology information.

The Office of Congressman Raúl Grijalva

Tucson, AZ

Intern

Summer 2017

- Performed constituent casework intake and support, liasoning with numerous federal agencies on behalf of citizens.

Publications

Diego Huerta, et al., (2023). Probabilistic risk assessment of residential exposure to metal(loid)s in a mining impacted community, *Science of The Total Environment*, <https://doi.org/10.1016/j.scitotenv.2023.162228>

Alma Anides Morales, Diego Huerta, Monica Ramirez-Andreotta. (2023, pre-print). Measuring Behavior and Risk Perception to Inform Children's Exposure Assessments and Communication Strategies, <http://dx.doi.org/10.21203/rs.3.rs-433981/v1>

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Diego G. Huerta
GUID: 843023513

Course Level: Juris Doctor

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	001	95	Civil Procedure David Vladeck	4.00	A	16.00	
LAWJ	002	51	Contracts Michael Diamond	4.00	A	16.00	
LAWJ	003	52	Criminal Justice Louis Seidman	4.00	A	16.00	
LAWJ	005	51	Legal Practice: Writing and Analysis Frances DeLaurentis	2.00	IP	0.00	
				EHrs	QHrs	QPts	GPA
Current				12.00	12.00	48.00	4.00
Cumulative				12.00	12.00	48.00	4.00
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	004	95	Constitutional Law I: The Federal System Paul Smith	3.00	A-	11.01	
LAWJ	005	51	Legal Practice: Writing and Analysis Frances DeLaurentis	4.00	B+	13.32	
LAWJ	007	95	Property John Byrne	4.00	A	16.00	
LAWJ	008	95	Torts Kevin Tobia	4.00	A-	14.68	
LAWJ	025	50	Administrative Law Eloise Pasachoff	3.00	A-	11.01	
LAWJ	611	06	World Health Assembly Simulation: Negotiation Regarding Climate Change Impacts on Health Kathryn Gottschalk	1.00	P	0.00	
Dean's List 2021-2022							
				EHrs	QHrs	QPts	GPA
Current				19.00	18.00	66.02	3.67
Annual				31.00	30.00	114.02	3.80
Cumulative				31.00	30.00	114.02	3.80

-----Continued on Next Column-----

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	121	09	Corporations Donald Langevoort	4.00	A	16.00	
LAWJ	1472	05	Energy Law and Policy Kathryn Zyla	2.00	A	8.00	
LAWJ	1491	07	Externship I Seminar (J.D. Externship Program) Deborah Carroll		NG		
LAWJ	1491	131	~Seminar Deborah Carroll	1.00	A-	3.67	
LAWJ	1491	133	~Fieldwork 3cr Deborah Carroll	3.00	P	0.00	
LAWJ	1552	05	Business and Capitalism James Feinerman	1.00	A-	3.67	
LAWJ	1782	08	Statutory Interpretation Theory Seminar Anita Krishnakumar	2.00	A	8.00	
LAWJ	304	05	Legislation Josh Chafetz	3.00	A-	11.01	
In Progress:							
				EHrs	QHrs	QPts	GPA
Current				16.00	13.00	50.35	3.87
Cumulative				47.00	43.00	164.37	3.82
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	146	08	Environmental Law	3.00	A	12.00	
LAWJ	1611	05	Administrative Law and Public Administration Seminar	3.00	A-	11.01	
LAWJ	165	09	Evidence	4.00	A	16.00	
LAWJ	1816	05	Breaking Privilege: An In-Depth Analysis of Privilege Issues in the Context of Civil Litigation Valerie Ramos	1.00	P	0.00	
LAWJ	1827	08	Wildlife and Ecosystems Law	2.00	A	8.00	
LAWJ	215	05	Constitutional Law II: Individual Rights and Liberties	4.00	A-	14.68	
Transcript Totals							
				EHrs	QHrs	QPts	GPA
Current				17.00	16.00	61.69	3.86
Annual				33.00	29.00	112.04	3.86
Cumulative				64.00	59.00	226.06	3.83
End of Juris Doctor Record							



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C., 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

June 12, 2023

Re: Clerkship Recommendation for Diego Huerta

Dear Judge:

I am writing to highly recommend Diego Huerta for a clerkship. I was fortunate to be Diego's supervisor throughout his internship in the Air Enforcement Division (AED) of the Environmental Protection Agency during the summer and fall of 2023, and I wholeheartedly attest that his legal skills and acumen and work ethic are stellar. I have worked with at least 75 interns over my 25-year tenure with EPA and Diego easily stands out as one of my top five.

While Diego worked for me at EPA's Air Enforcement Division, he displayed such a high level of competence and integrity that I offered him the unusual opportunity of taking on projects as if he was a staff attorney. One such project involved the development of a novel legal enforcement tool to address a significant nationwide environmental problem. After a thorough review of the assigned matter, including discussions with EPA scientists and the Office of General Counsel, he conducted research to determine a path forward, and developed an approach to allow AED to begin addressing the issue. Then he drafted a detailed memorandum to aid AED in executing the approach after his internship had ended.

Diego also accomplished with excellence a number technically complex assignments for others in my division in high-profile enforcement cases. He was able to jump into a difficult litigation with a refinery and review the evidence and prepare comprehensive evidence charts for four claims. He mastered the underlying law under a tight timeframe and was highly complimented for his work by the Senior Attorney at the Department of Justice in charge of the case. In addition, he drafted a complaint for a complicated vehicle emission certification case, as well as drafted a motion in limine and proposed joint stipulations in an administrative case involving vehicle emission control defeat devices. He also documented violations of the defeat device prohibition by searching through voluminous website sales data and social media accounts. An AED attorney mentoring Diego with the work cited above, Mark Palermo (now Chief of the Vehicle and Engine Branch) indicated:

He did all of this with precision, gusto, little need for direction, and with incredible speed. He can gain understanding and be ready to complete assignments involving novel legal issues and technically complex case facts

remarkably fast. He is an excellent writer and has all the requisite skill to be a highly successful attorney. He is not afraid to ask questions and is thoroughly dedicated to do the work necessary to master anything he is asked to accomplish. Finally, he clearly has the passion for environmental law and policy, a sharp intellect, impeccable integrity, and a highly congenial personality. I believe he is going to grow much further in these strengths as he gains experience in the practice of law.

Another attorney Diego worked with, Adrienne Trivedi, praised his work drafting a Clean Air Act judicial referral report to the DOJ on an oil and gas production case that has challenging legal issues. Adrienne indicated:

Diego did great work. In helping me draft the referral, he was inquisitive, paid careful attention to detail (even identifying a calculation error), eliminated redundancies, ensured consistency with a national model and a related referral already submitted, followed up timely with me throughout the assignment, and was very pleasant to work with.

Finally, one of our top environmental engineers was very pleased to have Diego's invaluable assistance on data management and analysis associated with an extensive inspection of a prominent retailer:

During the summer of 2022, Diego Huerta played a critical support role in assisting with EPA's inspection of vehicles and engines. Diego created and organized over 50 individual product inspection case files, transcribed hand-written inspection data from the field into a consolidated worksheet, filled in necessary data gaps, and essentially compiled most of the information which turned into the final inspection report. Diego also assisted in compiling publicly available compliance certification information for those vehicles/engines which were found with a label. Diego followed each task instruction well, completed each assignment in a timely fashion, and communicated well by seeking clarification when necessary and in delivery final work products. As a result of Diego's support, EPA was able to uncover over 50,000 claims for suspect uncertified vehicles/engines. I would recommend considering Diego as a sharp new addition to your team.

Diego exhibited remarkable professionalism and efficiency for a law student, as well as produced an enormous quantity of high-quality work given his short time with us. He had a very heavy workload during a very difficult and unprecedented time — transitioning from a global pandemic where many federal employees, such as myself, were working in separate, isolated locations. Yet he was able to complete all his assigned matters with an impressive level of excellence. Diego had the confidence to take the initiative to seek out a varied caseload and readily took on projects involving areas of law for which he had no experience and yet displayed the unusual ability to take command of the subjects. Diego's training in environmental science was also a significant benefit to AED, where engineers and attorneys usually work as a team on cases. As a

key member of one workgroup, Diego researched the central issue of CAA New Source Review applicability. In conducting this research, Diego was not only called upon to analyze statutory and regulatory language, but also delve deeply into technical aspects of applicability. He even discovered a potentially major source of emissions that the technical members of the workgroup had originally discounted. As part of this research, Diego contacted and consulted with persons involved with rulemaking as well as state and industry representatives to complete a comprehensive write up of the rule's operation and implementation. In working with the state, Diego successfully navigated local sunshine regulations. And, as the lead law clerk, he worked with another clerk to develop the anticipated defenses to further what AED expects to be a very politically difficult investigation. I have every confidence that Diego's work will help to navigate the expected difficulties.

Diego is a true team member. For example, when Diego already had a full caseload working for another attorney in AED, he stepped up to take on a last-minute fire drill to aid in the drafting of a rule in conjunction with Office of Air and Radiation. Diego thoroughly researched and wrote an eight-page memorandum on the logical outgrowth test in the context of a proposed rulemaking under the American Innovation and Manufacturing Act. His recommendations were critical in helping to determine the scope of the draft proposed rule.

Diego proved himself to have a sharp intellect, discerning judgment, good humor, meticulous organization, and unparalleled legal research and analytical skills. It was a true pleasure to work with him and I do not hesitate at all to state that he will be a highly valued member of any legal team. I expect a great future for Diego.

Please feel free to contact me if you have any questions: (202) 564-8953.

Sincerely,

Sabrina Argentieri

Sabrina Argentieri, Attorney Advisor
Stationary Source Enforcement Branch
Air Enforcement Division

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to write this letter of recommendation on behalf of **Diego Huerta, Georgetown Law '24**, who has applied to you for a clerkship. Diego is a strong writer with a personable demeanor and a wry sense of humor. He would meaningfully contribute to the analytic work of chambers while being an easygoing, playful presence. I have enjoyed working with him in two classes, and I recommend him highly.

I first got to know Diego when he enrolled in my 75-person Administrative Law course during the spring of his 1L year. Although I did not get to know him well during that semester, I was impressed by his engaging attitude when I cold called him. He wrote a very strong exam, earning an A- for his consistently good work on questions about justiciability, procedural compliance, judicial review, and constitutionality.

Where I got to know Diego much better is through his work in my much smaller 18-person seminar on Administrative Law and Public Administration. During class discussions, he routinely laid the groundwork for the key points of debate, often taking a provocative position on the assigned reading while finding engaging points of nuance. He and another classmate often had opposing viewpoints on the reading, and the dynamic between the two of them was admirable. They listened to each other and defused what could have been tension with humor and careful listening. The rest of the class typically used these two poles to reason through with each other what they themselves thought about the topic. By the end of the discussion, we had often found a place of agreement buried deep within the seeming contrast. This work suggests to me that Diego would play a constructive role working through briefs and opposing arguments in chambers.

In addition to providing a place to discuss the assigned reading, this seminar is also a writing-intensive course in which students submit three online posts connecting the assigned reading to their developing paper projects and then write a paper of at least six thousand words, meeting with me multiple times over the semester one-on-one to discuss a paper proposal, outline, and draft. Each student also writes a memorandum on one other student's draft paper, providing helpful comments on structure, writing, and analysis.

Diego did a consistently wonderful job on all of these tasks. He wrote a very strong paper on the Environmental Protection Agency's use of Supplemental Environmental Projects as part of the agency's enforcement mission. His writing was engaging and easy to follow, with a well-organized structure and clear analysis. I recommended that he work through one more round of revisions and then submit it for publication as a Note. He also wrote a very helpful memo to another classmate working on an environmental issue, proposing sensible and manageable changes for the classmate to implement in revision. Here, too, this work bodes well for both writing and collaboration as a law clerk.

Diego grew up in Arizona with a strong interest in science and the outdoors. He spent over a decade with a youth outdoor education program, first as a youth participant himself and then ultimately as a board member. He also earned a master's in environmental science at the University of Arizona. The child of two lawyers (Georgetown Law alums themselves who work on criminal defense and habeas in capital cases, respectively), Diego eventually came to see law as the arena in which he would use his scientific and environmental interests to pursue meaningful work. A member of the Georgetown Environmental Law Journal, Diego has interned with the EPA's Office of Civil Enforcement, and he will spend his 2L summer as an intern in the Department of Justice's Environmental and Natural Resources Division. I anticipate that Diego has a future in public service ahead of him. I also anticipate that everyone who works with Diego will find it an enjoyable experience.

I would be happy to discuss Diego's application with you further, so please do not hesitate to reach out. In the meantime, I will reiterate my enthusiastic support for his candidacy.

Very truly yours,

Eloise Pasachoff
Agnes Williams Sesquicentennial Professor of Law

Eloise Pasachoff - eloise.pasachoff@law.georgetown.edu - 202-661-6618

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It gives me great pleasure to recommend Diego Huerta, who has applied to serve as a law clerk in your chambers. Diego is incredibly smart, highly motivated, and hard-working—a top-notch student and citizen. I believe he would make an excellent law clerk and urge you to interview and hire him.

I got to know Diego over the 2022-2023 academic year, when he was a student in my Statutory Interpretation Theory seminar. The seminar had only 22 students and involved a lot of in-class discussion as well as written student critiques of papers, books, and articles, so I had many opportunities to engage in in-depth discussions with the students. Diego's written comments about the assigned class readings were among the best in the class—thoughtful, inquisitive, and appropriately skeptical at times. Both in his written work and in his in-class comments, Diego displayed an unusual ability to distill the assigned reading down to its most critical core and to synthesize and draw comparisons across different weeks' readings. He also provided valuable insights and commentary about the methodology used for papers that involved empirical analysis. It was a pleasure to have Diego in class—he was always well-prepared and engaged—and added an important perspective to class discussions.

Beyond his excellence in the classroom, Diego is a valued member of the Georgetown Law community. This past year, he served on the Georgetown *Environmental Law Journal*, and he will be its Executive Editor next year. Diego also spent this past fall working at the EPA's Office of Civil Enforcement, while maintaining stellar grades and serving on the *Environmental Law Journal*.

As you may notice from his resume, Diego's background is a little unusual for a law student. He is a scientist, with a degree in environmental science and several years' experience working in labs and performing scientific research. He also has published two articles about pollution exposure in scientific journals. And before law school, he served for several years as a youth mentor for experiential environmental education programs. As his background suggests, Diego is committed to using his law degree to work on environmental issues—and has already made significant headway down this path with his summer positions at EPA and DOJ.

In short, I believe that Diego would make a wonderful law clerk—he is incredibly intelligent, diligent, reliable, and hard-working. If you give him the opportunity, I have no doubt that he will be a valued colleague. He is an excellent student and human being, and I expect that he will have a very successful legal career. I hope that he gets the chance to begin it by working for you.

Thank you for considering this recommendation, and please let me know if I can provide any additional information about Diego that would assist you.

Sincerely,

Anita S. Krishnakumar
Professor of Law and
Anne Fleming Research Professor
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(917) 592-4561

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Deliberate Indifference? The Tenth Circuit's Misguided Views on Farmer

Diego Huerta

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The attached writing sample is an academic article prepared during the Georgetown Law Journal Write On Competition. Research outside the provided cases was prohibited. No edits have been made.

